

# REVIEW OF AIR TRAFFIC CONTROL REFORM PROPOSALS

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(114–33)

## HEARING BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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FEBRUARY 10, 2016

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February 8, 2016

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Committee on Transportation and Infrastructure  
**FROM:** Staff, Committee on Transportation and Infrastructure  
**RE:** Full Committee Hearing on "Review of ATC Reform Proposals"

**PURPOSE**

The Committee on Transportation and Infrastructure will meet on Wednesday, February 10, 2016, at 10:00 am in 2167 Rayburn House Office Building to examine proposals to reform the air traffic control (ATC) operations of the Federal Aviation Administration (FAA). The Committee will receive testimony from Airlines for America (A4A), the National Air Traffic Controllers Association (NATCA), the Reason Foundation, and the National Business Aviation Association.

**BACKGROUND**

Aviation is a major driver of economic growth and the ATC system is an essential component of this important sector of the economy. According to the FAA, civil aviation generates \$847 billion in annual economic activity, constitutes 5.4 percent of United States Gross Domestic Product (GDP) and supports over 11 million jobs.<sup>1</sup> United States airspace, the busiest and most expansive in the world, covers roughly 30 million square miles—constituting more than 17 percent of the world's airspace.<sup>2</sup> The ATC system is operated by the FAA's more than 14,000 federal air traffic controllers in 317 airport traffic control facilities.<sup>3</sup> Every day, air traffic controllers safely handle more than 50,000 operations.<sup>4</sup> The FAA also has safety oversight of civil aviation, including the operation of the ATC system itself.

<sup>1</sup> Federal Aviation Administration, *The Economic Impact of Civil Aviation on the U.S. Economy*, January 2015, p. 1. [https://www.faa.gov/air\\_traffic/publications/media/2015-economic-impact-report.pdf](https://www.faa.gov/air_traffic/publications/media/2015-economic-impact-report.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> Federal Aviation Administration, *A Plan for the Future: 10-Year Strategy for the Air Traffic Control Workforce*, 2015-2014, p. 10, and [https://www.faa.gov/jobs/career\\_fields/aviation\\_careers/atc\\_roles](https://www.faa.gov/jobs/career_fields/aviation_careers/atc_roles)

<sup>4</sup> FAA Press Release, July 6, 2011 [https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=12903](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=12903)

While the United States has one of the safest ATC systems in the world, the system has struggled to keep up with increasing demand. According to the FAA, airline delays and cancellations cost passengers, shippers, and airlines nearly \$33 billion annually.<sup>5</sup> FAA projects passenger growth to average two percent per year, reaching one billion passengers by 2029.<sup>6</sup> To help the ATC system better prepare for this forecasted growth, the FAA has been working for decades to modernize the system, which remains based on World War II-era radar technology. Without modernization, controllers and aircraft operators will continue to be forced to use the airspace in a very inefficient way.

## NEXTGEN

According to government watchdog reports, the FAA's 20-year, \$40 billion "NextGen" initiative – intended to transform the ATC system from a radar-based system to a satellite-based system – has been plagued by decades of cost and schedule overruns and has produced only incremental improvements in capacity and safety. Passengers and aircraft operators have seen limited benefits from recent FAA initiatives and those benefits are certainly not in line with taxpayer dollars invested – approximately \$6 billion to date.<sup>7</sup>

According to the Department of Transportation Inspector General (DOT IG), "since its inception a decade ago, FAA's progress in implementing NextGen has not met the expectations of Congress and industry stakeholders, and key modernization efforts have experienced significant cost increases and schedule delays."<sup>8</sup> Calvin Scovel, the DOT IG, has warned, "[T]he initial estimates from nine or ten years back called for \$20 billion in federal investments, \$20 billion in private investments with a stated goal of completing implementation of the program by 2025.... We're clearly not going to make it with a total of \$40 billion in investments, federal and private. We're probably looking at years beyond 2025 – perhaps another ten even. We're probably also looking at total expenditures on the magnitude two to three times that of the initial \$40 billion."<sup>9</sup>

In a recent report, the DOT IG found that eight of FAA's 15 ongoing major system acquisitions experienced a cumulative cost increase of \$3.8 billion beyond original estimates and delays ranging from seven to 174 months, with an average delay of 51 months.<sup>10</sup> Similarly,

<sup>5</sup> Nextor, *Total Delay Impact Study: A Comprehensive Assessment of the Costs and Impacts of Flight Delay in the United States*, Final Report, October 2010, p. vii

[http://www.isr.umid.edu/NEXFOR/pubs/TDI\\_Report\\_Final\\_10\\_18\\_10\\_V3.pdf](http://www.isr.umid.edu/NEXFOR/pubs/TDI_Report_Final_10_18_10_V3.pdf)

<sup>6</sup> FAA Press Release, March 16, 2015

[https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=18434](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=18434)

<sup>7</sup> U.S. Department of Transportation, Office of the Inspector General, Audit Announcement Memorandum, June 9, 2015.

<https://www.oig.dot.gov/sites/default/files/FAA%20Management%20of%20NextGen%20PLA%20Announcement%20Letter%2006-9-15.pdf>

<sup>8</sup> Office of Inspector General, U.S. Department of Transportation, *FAA Made Limited Progress in Implementing NextGen Provisions of the FAA Modernization and Reform Act of 2012*, AV-2014-027, Jan. 28, 2014, p. 2.

<sup>9</sup> Statement of Calvin Scovel, Inspector General, U.S. Department of Transportation, before the House Aviation Subcommittee, *Hearing on ATC Modernization*, February 5, 2014.

<sup>10</sup> Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency and Modernization Outcomes*, AV-2016-15, January 20, 2016, p. 13.

according to the Government Accountability Office (GAO), “[t]he three [ATC] programs with the largest cost increases—more than \$4 billion—are key to ATC modernization.”<sup>11</sup>

The extent to which FAA realigns and consolidates ATC facilities is another important component of the agency’s NextGen implementation efforts. To comply with the law, FAA provided Congress with a plan for consolidating and realigning its facilities. The DOT IG found that the plan is “significantly less comprehensive than previous consolidation plans...,” and does not include a process for realigning and consolidating facilities that manage high-altitude traffic.<sup>12</sup> In a recent report, the DOT IG found that despite the fact that FAA’s air traffic operations dropped 23 percent between fiscal years 2000 and 2012, the FAA’s ATC facility footprint has remained essentially unchanged.<sup>13</sup> The report also found that FAA has missed opportunities to complete large-scale facility consolidations that would bring efficiencies, address the costs of maintaining aging facilities, and facilitate the transition to NextGen.<sup>14</sup>

Finally, the GAO found that “... FAA’s organizational...has been slow to embrace NextGen’s transformational vision. Gaps in leadership have further undermined the Agency’s efforts to advance NextGen.”<sup>15</sup> A recent GAO survey found that aviation stakeholders lack confidence in FAA’s ability to implement ATC modernization.<sup>16</sup> More than three times as many of the stakeholders said that FAA’s overall implementation of NextGen was not going well than those who said it was going well.<sup>17</sup>

## OVERVIEW OF PREVIOUS U.S. AIR TRAFFIC CONTROL REFORM EFFORTS

In 1981, the FAA began an effort to modernize the ATC system by updating facilities and equipment to meet the anticipated demands of a growing volume of post-deregulation air traffic.<sup>18</sup> At the time, the modernization was estimated to cost roughly \$12 billion<sup>19</sup> and take more than ten years to complete.<sup>20</sup> However, in the ensuing years the effort encountered cost overruns, schedule delays, and performance shortfalls, which resulted in calls to reform the FAA.

<sup>11</sup> U.S. Government Accountability Office, *Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation*, GAO-12-223, February 2012, p. 12.

<sup>12</sup> Office of the Inspector General, U.S. Department of Transportation, *FAA’s Implementation of the FAA Modernization and Reform Act of 2012 Remains Incomplete*, CC-2014-010, February 5, 2014, p. 3.

<sup>13</sup> Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, January 15, 2016, AV-2016-015, pp. 8-9.

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Government Accountability Office, *Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation*, February 2012, GAO-12-223, p. 3.

<sup>16</sup> U.S. Government Accountability Office, *Air Traffic Control System: Selected Stakeholders’ Perspectives on Operations, Modernization, and Structure*, September 2014, GAO-14-770, p. 11.

<sup>17</sup> *Id.*

<sup>18</sup> This included plans to replace the computers at air route traffic control centers with new software, consoles and displays, facility consolidation, new secondary radars, upgraded weather services and a new landing system. U.S. Government Accountability Office, *FAA’s Plan to Improve the Air Traffic Control System*, AFMD-83-34, 1983. <http://www.gao.gov/assets/140/139683.pdf>

<sup>19</sup> U.S. Government Accountability Office, *Transportation: Examination of the Federal Aviation Administration’s Plan for the National Airspace System – Interim Report*, AFMD-82-66, 1982, p.2. This report claims initial estimates to be roughly \$10 billion; however, a later GAO report states the \$12 billion figure.

<sup>20</sup> Gerald L. Dillingham, U.S. Government Accountability Office, Testimony before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, *FAA’s Modernization Efforts – Past, Present and Future*, October 30, 2003, p. 1.

There have been previous bipartisan ATC reform recommendations calling for an independent, nongovernmental, self-financing entity:

- In 1988, the Aviation Safety Commission urged creation of a self-financing air navigation service provider free of federal personnel and procurement rules, to be overseen by a board that would include industry stakeholders.<sup>21</sup>
- In its 1993 report, the National Commission to Ensure a Strong Competitive Airline Industry, chaired by former Virginia Governor Gerald Baliles, recommended that the FAA be “reinvented” and restructured as an independent federal corporate entity, with its expenditures and revenues removed from the federal budget.<sup>22</sup>
- Also in 1993, then-Vice President Al Gore’s task force on government reorganization proposed a detailed plan for shifting ATC to a user-fee supported government corporation to be called the U.S. Air Traffic Services Corporation (USATS).
- In 1997, the National Civil Aviation Review Commission, chaired by former Secretary of Transportation Norman Mineta, recommended a financially self-supporting ATC entity within the FAA.<sup>23</sup> Cost-based user fees from airlines would provide a revenue stream outside the federal budget process and support bonding to finance large-scale modernization.<sup>24</sup>
- In 2007, the Bush administration called for a hybrid, cost-based system for financing FAA programs, under which commercial airlines and business jet operators would pay direct charges for ATC services while general aviation (GA) non-jet operators would continue to pay the GA fuel tax.<sup>25</sup>

Congress responded by enacting only portions of the Baliles and Mineta commissions’ recommendations.<sup>26</sup> In 1995, Congress passed legislation exempting FAA from most federal personnel rules and allowed the agency to implement a new personnel management system that provided greater flexibility in hiring, training, and compensating personnel.<sup>27</sup> In 1996, other legislation was passed that included additional personnel reforms and required the agency to establish a cost accounting system.<sup>28</sup> In 1995, Congress also granted FAA relief from principal federal acquisition laws and regulations.<sup>29</sup> In April 2000, Congress required the appointment of a Chief Operating Officer to oversee the day-to-day operation and modernization of the ATC

<sup>21</sup> *Aviation Safety Commission Final Report and Recommendations*, April 1988, p. 1.

<sup>22</sup> The National Commission to Ensure a Strong Competitive Airline Industry, *Change, Challenge and Competition: A Report to the President and Congress*, August 1993, pp. 8-9.

<sup>23</sup> National Civil Aviation Review Commission, *Avoiding Aviation Gridlock and Reducing the Accident Rate*, December 1997.

<sup>24</sup> *Id.* at p. 144.

<sup>25</sup> *Id.* at pp. 18-19.

<sup>26</sup> Robert W. Poole, *The Urgent Need to Reform the FAA’s Air Traffic Control System*, March 2007, p. 18.

<sup>27</sup> *Fiscal Year 1996 Department of Transportation and Related Agencies Appropriations Act*, Section 347(a), P.L. 104-50, Nov. 15, 1995.

<sup>28</sup> *Federal Aviation Reauthorization Act of 1996*, Sections 253 & 276, P.L. 104-264, Oct. 9, 1996.

<sup>29</sup> *Fiscal Year 1996 Department of Transportation and Related Agencies Appropriations Act*, Section 347(a), P.L. 104-50, Nov. 15, 1995.

system.<sup>30</sup> However, Congress rejected the proposal to shift from excise taxes to user fees.<sup>31</sup> Similarly, the 110<sup>th</sup> Congress did not include the Bush Administration's finance reform proposal in the FAA reauthorization legislation.

## THE CONTINUING NEED FOR U.S. ATC REFORM

In a January 2016 report, the DOT IG found that previous efforts by executive and legislative branches to reform the agency have failed.<sup>32</sup> Since the implementation of the personnel and procurement reforms, costs have continued to rise while operational productivity has declined.<sup>33</sup> Between fiscal years 1996 and 2012, the DOT IG found that FAA's total budget grew by 95 percent, from \$8.1 billion to \$15.9 billion, and its total personnel, compensation, and benefits costs increased by 98 percent, from \$3.7 billion to \$7.3 billion, while air traffic dropped 23 percent.<sup>34</sup> The DOT IG attributed FAA's disappointing reform outcomes largely to the agency's failure to take full advantage of its authorities when implementing new personnel systems, and not using business-like practices to improve its operational efficiency and cost effectiveness.<sup>35</sup> In addition, FAA's workforce levels have remained relatively constant over the past two decades and the number of air traffic facilities the FAA operates has not changed since 2000 despite the drop in air traffic.<sup>36</sup> The DOT IG stated that FAA's organizational culture, which has been resistant to change, further deters its reform efforts.<sup>37</sup>

Today, the FAA, like other Federal entities, must conduct capital project planning, including efforts to modernize the ATC system, on the basis of an annual Congressional appropriations cycle. The agency is likewise impacted by sequestration, extensions, continuing resolutions, and government shut downs. Three years of federal budget disputes, including the FAA's decision in April 2013 to furlough ten percent of its air traffic controller workforce to meet sequester-driven budgetary cuts, the partial shutdown of the FAA in August 2011 due to the lapse of FAA's operating authority, and the continuing schedule delays and cost overruns that have plagued FAA's efforts to modernize the ATC system, have rekindled the debate over ATC reform. The lack of a steady, predictable funding stream and short term authorization extensions are not conducive to the long-term planning needed to deliver large, multi-year capital projects like ATC modernization.

The Reason Foundation, The Brookings Institution, and the Cato Institute have all found that aviation safety and efficiency would be enhanced by providing a steady, predictable funding stream (via direct charges paid by users) for NextGen, as well as more effective management.<sup>38</sup> Proponents

<sup>30</sup> *Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century*, Section 303, P.L. 106-181, Apr. 5, 2000.

<sup>31</sup> Robert W. Poole, *The Urgent Need to Reform the FAA's Air Traffic Control System*, March 2007, p. 18.

<sup>32</sup> Department of Transportation, Office of Inspector General, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, January 15, 2016, AV-2016-015, p. 2.

<sup>33</sup> *Id.* at p. 8.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at p. 2.

<sup>36</sup> *Id.* at p. 8.

<sup>37</sup> *Id.* at p. 2.

<sup>38</sup> Robert W. Poole, *Why An Air Traffic Control Corporation Makes Sense*, Reason Foundation Policy Study No. 278, February 2001, p. 15; Chris Edwards, *Privatize the FAA*, Cato Institute, April 24, 2013; and Dorothy Robyn, *Air Support: Creating a Safer and More Reliable Air Traffic Control System*, The Brookings Institution, July 2008, pp. 18-19.

<http://reason.org/files/c1a82c766aee1c5b8ee55404ca00fb30.pdf>

<http://www.cato.org/publications/commentary/privatize-faa>

of ATC reform argue that, under some reform scenarios, a self-financed ATC service provider would access capital through the private markets.<sup>39</sup> In addition, a self-financed ATC service provider would be free from federal procurement regulations that, according to some observers, have prevented the FAA from purchasing and deploying new technologies in a timely, cost-efficient manner in some cases.<sup>40</sup>

At a March 24, 2015 Subcommittee on Aviation hearing, witnesses urged Congress to consider comprehensive reform of how the FAA is governed and financed.<sup>41</sup> Dorothy Robyn, a former Clinton Administration official, citing ongoing problems with NextGen implementation, declining budget projections for FAA, and the prospect of another sequester-related shutdown, recommended that Congress move the ATO out of the FAA, and replace the aviation excise taxes with cost-based charges on commercial and business aircraft operators.<sup>42</sup> Citing the success of commercialized ATC service providers abroad, all the witnesses supported separating ATC services from the FAA and establishing an independent, not-for-profit corporation governed by stakeholders and financed by user fees to manage the nation's ATC system.

Similarly, a wide-range of aviation stakeholder groups have called for governance and/or finance reform of the FAA's air traffic control operations. In May 2015, the Eno Center for Transportation's NextGen Working Group issued a report on options for ATC reform in the United States.<sup>43</sup> The Eno report recommended that ATC services should be taken out of the direct control of the federal government and be provided by a more independent organization, be it a non-profit organization or a government corporation.<sup>44</sup> Under the Eno proposal, the entity would have a non-profit mandate, and all key stakeholders would be represented in a governing board.<sup>45</sup> The Eno report called for replacing the current funding of the ATC system, with direct payments to the ATC provider.<sup>46</sup>

On February 1, 2016, a bipartisan group of former federal officials sent a letter to the House Committee on Transportation and Infrastructure calling for "bipartisan support for transformational change" of the ATC system, specifically the establishment of a federally-chartered, non-profit organization that would be governed and funded by the stakeholders and users of the aviation system.<sup>47</sup> The officials asserted that Congress should enact reforms now given the fact that ATC infrastructure and technology are falling behind the world's ATC providers.

<sup>39</sup> Robert W. Poole, *Organization and Innovation in Air Traffic Control*, Hudson Institute Initiative on Future Innovation, 2013, p. 5.

<sup>40</sup> *Id.*

<sup>41</sup> Statements by Robert Poole, the Reason Foundation; Doug Parker, President and CEO, American Airlines, on behalf of A4A; Dorothy Robyn; and David Grizzle, former COO of the FAA, before the Subcommittee on Aviation, House Transportation and Infrastructure Committee, March 24, 2015.

<sup>42</sup> <http://transport.house.gov/calendar/eventsingle.aspx?EventID=398745>

<sup>43</sup> Statement of Dorothy Robyn, House Committee on Transportation and Infrastructure, Subcommittee on Aviation, March 24, 2015.

<sup>44</sup> <http://transport.house.gov/calendar/eventsingle.aspx?EventID=398745>

<sup>45</sup> Eno Center for Transportation NextGen Working Group, Final Report, May 2015

<sup>46</sup> <https://www.enotrans.org/wp-content/uploads/wpse/downloadables/NextGen-Final-Report-12am2.pdf>

<sup>47</sup> *Id.* at p. 61.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Letter was signed by former Senators Byron Dorgan (D-ND) and Trent Lott (R-MS); former Secretaries of Transportation James Burnley, Norman Mineta, and Mary Peters; former FAA Administrator Randy Babbitt; former

## OVERVIEW OF FOREIGN AIR TRAFFIC CONTROL REFORM EFFORTS

Since 1987, over 50 nations have shifted the responsibility for providing ATC services from the national government to independent, self-financed ATC service providers.<sup>48</sup> While the majority of these service providers are government corporations, the ATC service providers of Canada and the United Kingdom are wholly or partially private and their respective governments regulate them but do not run their day-to-day operators.<sup>49</sup>

The DOT IG recently conducted a study on the performance of four Air Navigation Service Providers (ANSPs).<sup>50</sup> According to the DOT IG, since these countries commercialized their respective ANSPs (with the exception of France's ANSP, which is a government agency), there has been no evidence of any degradation in aviation safety levels.<sup>51</sup> Similarly, in a 2005 report that studied five independent, self-financed ATC service operators, the GAO found that the safety of air traffic control services "remained the same or improved"; the nongovernmental, self-financing ATC service providers had lowered their costs and "improved efficiency"; and all also invested in new technologies and equipment.<sup>52</sup>

In October 2014, the MITRE Corporation prepared a report at the request of the FAA on six international civil aviation authorities (CAAs).<sup>53</sup> The six countries shared the experience of separating the ANSP from the government.<sup>54</sup> In all cases, MITRE found that the separation of the ANSP from the CAA was reasonably successful.<sup>55</sup> While there were difficulties in the shift to an independent regulator of a corporatized ANSP, adjustments were made in response to the difficulties encountered.<sup>56</sup> The CAAs interviewed by MITRE were unanimous in stating that the separation of the ATC from the CAA was worth it.<sup>57</sup> Among the benefits they expressed were increased focus on safety by the regulator and the ANSP, improved efficiency of the ANSP, reduction in total cost to users, and improved participation by aviation stakeholders.<sup>58</sup>

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FAA Chief Operating Officers Russell Chew (; Hank Krakowski and David Grizzle; and former White House National Economic Council Special Assistant Dorothy Robyn.

<sup>48</sup> Robert W. Poole, Jr., *The Urgent Need to Reform the FAA's Air Traffic Control System*, Reason Foundation, March 2007, p. 11.

<sup>49</sup> *Id.* at p. 12.

<sup>50</sup> ANSPs studied included: Canada, France, Germany, and the United Kingdom.

<sup>51</sup> Statement of Matthew Hampton, Assistant Inspector General for Aviation, U.S. Department of Transportation, before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, March 24, 2015.

<sup>52</sup> U.S. Government Accountability Office, *Air Traffic Control: Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from Their Commercialization*, GAO-05-769, July 2005, p. 4. ANSPs studied included: Australia, Canada, Germany New Zealand and the United Kingdom.

<sup>53</sup> Dan Brown, Tom Berry, Steve Welman and E.J. Spear, The MITRE Corporation, *CAA International Structures*, October 2014.

<sup>54</sup> Studied Canada, New Zealand, Australia, France, Germany, and the United Kingdom. The CAAs were selected because their level of technological sophistication is similar to the FAA's and because their countries share many common economic and political characteristics with the United States, although none approximate the scale or complexity of the U.S. system.

<sup>55</sup> *Id.* at p. 9.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at pp. 9-10.

## ATC REFORM PROPOSAL IN AIRR ACT

Title II of the Aviation Innovation, Reform, and Reauthorization Act of 2016 (AIRR Act) creates the ATC Corporation, an independent, Federally-chartered, not-for-profit corporation to operate and modernize air traffic (AT) services.

### *Corporation and Governance*

ATC Corporation will be an independent corporation completely outside the government and exempt from taxation as a not-for-profit corporation. The Federal government will not be liable for any action or inaction of ATC Corporation and will not explicitly or implicitly guarantee any debt or obligation of the Corporation. ATC Corporation, which will have all the powers and authorities of any corporation, will be responsible for providing AT services and necessary safety information to AT service users to ensure the safe and efficient management of air traffic.

ATC Corporation will be governed by a Board of Directors nominated by aviation stakeholder groups. The Board will be populated through a two-step process by which certain stakeholder groups, known as “principal organizations,” will nominate Directors to the Board. Within 30 days of enactment, the Secretary will identify the principal organizations representing the following aviation stakeholder communities: mainline air carriers, noncommercial owners and recreational operators of general aviation aircraft, air traffic controllers, and airline pilots.

Once the principal organizations are identified, they will appoint “Nominating Members” who will nominate Directors for the Board. The Secretary will directly appoint two Directors to the Board to confirm the nominations of the Nominating Members. The Board’s composition will be:

- Two Directors **appointed** by the Secretary of Transportation.
  - Only the Directors appointed by the Secretary are exempt from having to be approved by the Board.
- The Chief Executive Officer (CEO) of ATC Corporation.
- Four Directors nominated by the Nominating Member appointed by the principal organization representing mainline air carriers.
- Two Directors nominated by the Nominating Member appointed by the principal organization representing noncommercial owners and recreational operators of general aviation aircraft.
- One Director nominated by the Nominating Member appointed by the principal organization representing the union representing the Corporation’s air traffic controllers.
  - Prior to the date of transfer, this is taken to mean the union representing FAA air traffic controllers.
- One Director nominated by the Nominating Member appointed by the principal organization representing the largest group of airline pilots.

The terms of the first Directors appointed or nominated will expire on the date of transfer. Following the date of transfer, Directors will serve staggered three year terms. A Director can serve after the expiration of the Director’s term until a successor has taken office. After the date of transfer, the full Board will be responsible for confirming nominations by the Nominating Members and will have the ability to determine the identity of principal organizations.



The fiduciary duties of the Directors will be to ATC Corporation, not to the stakeholder groups that nominated them. As such, there are certain qualifications for individuals to serve as Directors. Directors must be American citizens and are subject to restrictions that prohibit individuals with possible conflicts of interest from serving on the Board. No employees of ATC Corporation (except the CEO), government officials or employees, employees of any principal organizations, or employees of any entity with a material interest as a user or supplier of ATC Corporation services can serve as a Director. The last restriction may be waived under extremely strict standards if it is determined that there was likely to be no conflict of interest for such a Director.

A Director may only be removed by the Board in accordance with the Corporation's bylaws. The Board is responsible for hiring a CEO to manage and direct the day-to-day operations of ATC Corporation. The CEO, who must be an American citizen, will also be responsible for all officers and employees of the Corporation, and will serve at the pleasure of the Board.

The Board will be responsible for corporate governance of ATC Corporation, and has the sole authority to amend corporate bylaws, adopt annual budgets, approve strategic plans, approve the issuance of bonds, and to hire a CEO. The Board will be required to maintain a Safety Committee composed of Directors to ensure ATC Corporation will maintain and improve upon the current high level of safety in the ATC system.

ATC Corporation will have an Advisory Board consisting of no more than 15 individuals representing interested organizations and other parties that do not choose Nominating Members, including, but not limited to: commercial service airports; owners, operators and users of business general aviation aircraft; aerospace manufacturers; operators of commercial unmanned aircraft systems; appropriate labor organizations; the Department of Defense (DoD); and small communities.

The Advisory Board will conduct activities directed by the Board of Directors and may, on its own initiative, study, report and make AT services-related recommendations to the Board of Directors.

#### *Transition*

The Secretary of Transportation will manage and oversee the transfer of AT services to ATC Corporation to ensure that the transition receives the proper level of attention. The transfer of operational control of AT services, as well as all federal personnel, facilities, and activities needed to provide those services, will occur on October 1, 2019.

Between date of enactment and date of transfer, there will be formal processes for determining which activities and personnel will move to the Corporation or be retained at the FAA. Other more informal processes will be taking place as well to ensure that inward facing FAA protocols for AT services are either carried over to the ATC Corporation or rewritten as outward-facing safety regulations. The processes and negotiations will involve ATC Corporation, the Secretary, the FAA, and appropriate labor organizations. To ensure Congress is kept well informed on the transition, the DOT IG will submit quarterly reports on the progress of the transition.

*Safety Oversight and Regulation of the Corporation*

The Secretary will be responsible for the performance-based safety oversight of ATC Corporation. Prior to the date of transfer, the Secretary will prescribe performance-based regulations and minimum safety standards for ATC Corporation's operation of AT services. The regulations will include a safety management system (SMS) for the assessment and management of risk in all procedures, processes, and practices necessary to operate AT services. Initially, this SMS will be based on the one currently used by the FAA, but specific safety review processes with the Secretary's approval will allow ATC Corporation to modify the SMS as needed over time. The safety standards combined with the SMS will ensure that ATC Corporation continues and improves upon the safety the ATC system currently enjoys.

ATC Corporation will be required to maintain adequate levels of insurance and coverage to provide complete indemnification of the Corporation's employees and protect the Corporation from financial harm. As part of the safety oversight of ATC Corporation, the Secretary will determine what constitutes adequate levels of insurance.

ATC Corporation, as an independent corporation, will not exercise any regulatory authority, meaning the Secretary will be responsible for taking any regulatory action related to AT services, including the reclassification of airspace or imposition of required equipage standards. ATC Corporation, as the provider of AT services, will be in a unique position of being able to analyze how airspace or air route should be configured. As part of the transition, the Secretary will establish a process for the expeditious review of proposed changes to the airspace by ATC Corporation. To be clear, ATC Corporation will only be able to suggest changes to airspace classifications or other similar changes; the Secretary will ultimately be responsible for exercising regulatory power to enact those changes.

The bill directs the Secretary to develop a process for the Secretary to review any proposals to close an air traffic control tower that prior to the date of transfer was operated under the FAA's Contract Tower Program. The process would apply when the proposed closure would result in an airspace change and at the request of the airport sponsor. There are other types of changes, or locations where changes may occur, that will merit special attention by the Secretary. For example, changes near major airports or specific national security or defense designations will have a longer review period than other airspace modification proposals.

*Financing*

ATC Corporation will be funded entirely through charges and fees assessed and collected from air traffic services users that are consistent with a set of statutory charging principles.

- Charges and fees must be consistent with the International Civil Aviation Organization's (ICAO) policies on ATC service charges and international obligations of the United States;
- Charges for certain categories of users may be charged on a flat-fee basis if consistent with ICAO charging principles;
- Access to airspace cannot be based on the level of charges a user pays;
- Charges and fees may not violate any international obligation of the United States.

## XV

Importantly, charges may not be imposed on *any* piston engine aircraft, *any* noncommercial turbine engine aircraft (including jet and turboprop), operators of air taxis in remote areas, or military flights. General aviation users will support the aviation system just as they always have; through fuel taxes that are controlled by Congress and paid at the pump. Military flights will be exempt in recognition that the Department of Defense, as a byproduct of its aeronautical mission, provides some AT services to civil aviation.

ATC Corporation's Board of Directors will be responsible for setting and approving its own charges and fees within the limit of the statutory charging principles. Before any charge or fee may become effective, ATC Corporation must publish it 90 days in advance. AT service users may file a complaint with the Secretary of Transportation if the user believes a charge or fee to be unreasonable. The bill provides for an expedited consideration of complaints by the Secretary to help ensure that the charges and fees-setting process does not become bogged down in litigation.

As an independent, not-for-profit corporation, ATC Corporation will be able to issue revenue bonds and other debt instruments in the private markets, providing more stable and effective capital financing. However, ATC Corporation will not be permitted to issue or sell equity shares or stock in the Corporation.

### *Employee Management*

Many thousands of Federal personnel will transfer from the FAA to ATC Corporation, including more than 14,000 air traffic controllers. A central tenant of the bill is that Federal employees who transfer to ATC Corporation will be held whole in terms of the benefits or compensation they received and were promised as Federal employees. Transferred Federal employees may retain their federal retirement and health insurance plans or opt for the benefit plans offered by the Corporation. For its employees retaining their federal retirement and health insurance plans, ATC Corporation will pay any required deductions and employer contributions.

To ensure total system continuity, many aspects of existing labor-management relations will be preserved through partial application of the laws that currently apply to the FAA and its labor organizations. The rights of air traffic controllers and other employees to participate in labor organizations and to collectively bargain would also be preserved. ATC Corporation must recognize and bargain with the labor organizations selected by the employees and comply with the terms of collective bargaining agreements (CBAs) and arbitration awards in effect on the date of transfer until such agreements and awards expire or are lawfully altered or amended. CBAs must be effective for no less than two years.

Because ATC services are so vital to the national economy, ATC Corporation employees are prohibited from engaging in any strike or other organized disruption. Disputes arising from CBAs must be resolved through mediation. If mediation fails, the dispute will be resolved through binding arbitration.

### **THE DEFazio ALTERNATIVE TO AIR TRAFFIC CONTROL PRIVATIZATION<sup>59</sup>**

Like the air traffic control system, the FAA's safety oversight, certification, airports, and related programs are in need of stable, predictable funding from year to year. The DeFazio

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<sup>59</sup> This section was drafted by the Minority Staff of the Transportation and Infrastructure Committee.

alternative would provide relief to the entire FAA from the adverse effects of budget sequestration and shutdowns by treating all excise tax revenue deposited into the Airport and Airway Trust Fund as mandatory spending, exempt from sequestration and the annual appropriations process.

The DeFazio alternative would also require substantial reforms of the FAA's procurement and personnel management. As the Department of Inspector General reported in January, prior reforms of the FAA's procurement and personnel management systems in 1995 and 1996 have not had their intended effects. The Inspector General concluded, for example, that the FAA has not taken advantage of the reforms to adopt industry best practices in running large-scale capital investments and managing a large, diverse workforce. The DeFazio alternative would address these weaknesses by requiring significant, bold reforms of the FAA's existing procurement and personnel rules, further insulating the agency from cumbersome Federal rules that, while providing for sound management controls in other agencies, are not suitable for a complex, capital-intensive, 21<sup>st</sup>-century aviation system.

**WITNESSES**

**Mr. Paul Rinaldi**

President

National Air Traffic Controllers Association

**Mr. Nicholas E. Calio**

President and Chief Executive Officer

Airlines for America

**Mr. Ed Bolen**

President and CEO

National Business Aviation Association

**Mr. Robert Poole**

Director of Transportation Policy

Reason Foundation

## REVIEW OF AIR TRAFFIC CONTROL REFORM PROPOSALS

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WEDNESDAY, FEBRUARY 10, 2016

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:05 a.m. in room 2167, Rayburn House Office Building, Hon. Bill Shuster (Chairman of the committee) presiding.

Mr. SHUSTER. The Committee on Transportation and Infrastructure will come to order. I would like to welcome everybody this morning. Looks like we have got a packed house, a lot of interest in the hearing today on reviewing the ATC [air traffic control] reform proposals. Again, I want to welcome everybody here.

Last week Chairman LoBiondo and myself introduced the AIRR Act, the Aviation Innovation, Reform, and Reauthorization Act of 2016. This bill provides transformational reform of the U.S. aviation system, something that is absolutely necessary to modernize our air traffic control system, to ensure the system is both safe and efficient, and—let me say that again, safe is the number-one priority of this effort, and has always been of the effort at the FAA [Federal Aviation Administration], but we need to make sure it is efficient, and presently it is not efficient, and studies I see, it is working backward from becoming more efficient—and to ensure America leads the world in this industry, an industry that we invented.

A key reform in this bill takes the ATC out of the Federal Government, and establishes a federally chartered, independent, not-for-profit Corporation to provide that service. This Corporation will be governed by a board representing the system's users. Today's hearing focuses on the ATC reform piece of the bill.

I believe Ranking Member DeFazio and I agree that the status quo at the FAA is unacceptable, and that real change is necessary. We have worked together on large parts of this bill in the same bipartisan spirit as other bills this committee has passed and sent on to the President. I think we are on the same page on many reforms and provisions.

We do have an honest policy disagreement on the approach to fixing ATC. I have been talking about my ideas for improving ATC for over 2 years, and I have put them on the table. I know the ranking member has some ideas, as well. Today is the opportunity for the committee to discuss the ideas we have put forward.

As I said, I believe we have to do better. Delays, congestions, and inefficiencies cost our economy \$30 billion a year. And in the next

decade we will be up to 1 billion people, 1 billion passengers flying. And without real improvement, the system is only going to get worse. Unfortunately, FAA has proven it can't modernize the air traffic system. Delays, cost overruns, and setbacks have been going on for 30 years.

And we just got the newest report from the DOT OIG [U.S. Department of Transportation Office of Inspector General]. January 15th it came out. The FAA reforms have not achieved expected cost, efficiency, and modernization outcomes. And they did this looking back over the last 20 years. And if you go back even further, and report after report has said the FAA is incapable of developing and rolling out and modernizing the air traffic control system, among other things, among things they have—1995 we exempted them from a Federal human—or the personnel hiring/firing under the Federal Government, we exempted them from that.

And today we hear about the need to hire 3,000 traffic controllers roughly a year, and they are only able to do about half of it. So throughout the system, throughout the reforms they have had available to them, they have not been able to do that. And, as I said, this is just the latest report from the inspector general.

The IG [inspector general] has testified here that, while initial cost estimates for NextGen were about \$40 billion, and the cost would double or triple and take a decade or more before it could be—possibly be deployed. So instead of costing \$40 billion and hopefully finishing in 2025, realistically we are looking at upward of over \$100 billion, and a completion in maybe 2035 or beyond.

Without a doubt, Congress and the political interference are part of this problem, whether it is the 23 extensions we faced before, the sequestration, Government shutdown, congressional—Members of Congress weighing in when the agency tries to streamline, when it tries to close a facility or consolidate a facility, and some Member of Congress, powerful Member of Congress says, “You are not going to close down my facility,” it has caused big problems when you are trying to run an operation that is in need of consolidations, in need of reducing its footprint because of the technology that should be available to do that. So Congress has been a problem.

But the basic problem is that the FAA is a huge bureaucracy, it is not a high-tech service provider. That is what we are talking about, telecommunications provider to the flying public. The planes are up in the air, the folks on the ground, making sure they are communicating to keep that airspace safe. Congress has tried procurement and personnel reforms at FAA, which I have mentioned, and they failed to implement them.

The time for piecemeal reform is over. For 30 years we have tried this, a little bit here, a little bit there, even some big stuff. But it just was rearranging the deck chairs on the *Titanic*.

The AIRR Act takes air traffic control out of the FAA and transitions it to a new Corporation, a not-for-profit Corporation, over the next 3 years. It's a 6-year bill, 3 years for transition and then the next 3 years to—for the startup of this new entity.

And I just want to mention the Canadians and the Germans and the Australians across the country—were 50 of them—have done something very similar to what we are talking about here today. But I just want to say that August of this year, the Canadians will

launch their first satellites into space. And by the end of 2017, they will have over 70 satellites launched. They will have their GPS [Global Positioning System] up in space. Currently, today, we can only see 30 percent of the airspace on our current technology. When they deployed those 70 or so satellites, they will be able to see 100 percent of the airspace in the globe, the Canadians.

I am told there are already 15 or 16 countries that have signed up for their services. So the Canadians, Nav Canada and their partners, they are developing this system. I believe they are going to become the dominant controller of airspace in the world. They are going to be able to fly planes over the North Atlantic and over the Pacific, straighter lines, closer together, more efficiently. And that is when we are going to really see our loss in the leadership in the world, when it comes to controlling airspace and being the gold standard.

Again, this Corporation we are setting up is completely independent of the Federal Government. This is not a Government Corporation, a quasi-governmental entity, or a GSE [Government-Sponsored Enterprise]. It is not that. The Federal Government will not back the obligations, the financial obligations, for this Corporation. The Corporation will simply provide a service.

The bill does not give the airspace to the Corporation; that remains the public trust. That belongs to the American people. And the FAA remains absolutely responsible for regulating the airspace and aviation safety.

We do this in a way that protects the GA [general aviation] and the rural communities. Noncommercial GA is exempted from fees or charges. Let me repeat that again, because everywhere I go in this town, it doesn't seem to resonate with people. Noncommercial general aviation is exempt from fees or charges. Now, there are some folks in this room and around town that don't think that is right, but I think that is the fair way to move forward. And the Corporation can't tie airspace access to what users pay. Again, can't tie their access to what they pay. In fact, in talking to the folks in Canada, the GA community has had a very positive experience up there.

This structure gets ATC away from the budget process and political decisionmaking. I know the notion goes against the establishment. We have already had some very senior Republicans on very important committees say, "Oh, we can't do this," and that is, again, the establishment pushing back, saying we can't do this. We can do this. We need to do this. We must do this. And we can do what is best for the American aviation system if we show the political will.

And let me tell you, it is—this has not been an easy—I know a couple of you here at the witness stand have gone through some tough days and weeks. I appreciate you staying strong.

And this isn't a new idea. This idea—one of our folks' testimony today, Mr. Poole, he has been at that desk I don't know how many times over the last 30 years, talking about this. The Clinton administration tried to do it, the Bush administration tried to do it. And, since that time, since Clinton's time and Bush's time, it has become the global standard, having an independent air traffic control system, independent from the regulator.

ICAO [International Civil Aviation Organization], who is the—sort of sets the standards for the world, has said that is what we should be doing all over the country, over the world. And more than 50 other countries have successfully done this, with benefits across the board. Safety is maintained—in some cases it goes up, it is even safe. We have modernized systems, we have improved efficiencies and service, and costs have gone down.

We will see more effective use of the airspace, airspace capacity increased, more direct routes, which will save time and money, increased capacity, shorter flight times, reduced delays and cancellations, and reduced pollution and noise. With the operational efficiencies, I believe we can save billions of dollars in the new system like this.

And again, the FAA will focus on what it does best, and that is regulate safety of the system.

We started this process over 2 years ago. We have worked with stakeholders throughout the aviation community to address issues they have raised. In this bill, we have worked to streamline the certification process, address safety issues, improve passenger experience, provide robust funding for the AIP [Airport Improvement Program], and address the safety—integration of drones into the airspace.

Taken as a whole, the AIRR Act does what is best for all users of the system, and the future of U.S. aviation. I want our country to have the safest—or continue to have the safest aviation system in the world, as well as the most efficient, cost-effective, and advanced system. We don't have that today, but I believe we will under this bill.

So, with that, I would like to now recognize Ranking Member DeFazio for an opening statement.

Mr. DEFAZIO. Thank you, Mr. Chairman. I—Mr. Chairman, we have worked together on many issues that relate to FAA reauthorization, and I appreciate working together. And there is much agreement, a couple of disagreements outside of the area of ATO [Air Traffic Organization], which we will go through tomorrow.

The ATO is the major stumbling block, and I believe it jeopardizes all of the other work, the essential work in that bill that deals with drones and, you know, other safety issues, a whole host of issues: certification reform, which we have—been long overdue, which is crucial to keeping our lead and manufacturing and software that relates to aviation in the world. And I fear that this proposal jeopardizes that.

We do agree on enduring issues that Congress identified in the 1990s—1996 attempted to reform procurement and personnel at the FAA. The FAA blew it off. I will have targeted proposals on procurement and personnel, which I will offer tomorrow. And then, yes, there have been tremendous problems, and I believe, in part, NATCA [National Air Traffic Controllers Association] is here today because they are still really angry about sequestration shutdowns and layoffs that happened because of the budget shenanigans which were, of course, caused by the majority party.

Now, how do we protect ourselves against Congress is a big issue. This is one particular solution. I believe there is a better solution, because this one actually fails that test. I raised last sum-



mer the issue that this would be unconstitutional. We cannot devolve regulatory or ratemaking and other competitive impacting issues to a private entity under the Constitution. It is very, very clear we can't do that.

I was first blown off, but now the chairman's proposal actually recognizes it, and we have what I would call a Rube Goldberg, which I would like them to put up on the screen now.

[Slide]

Mr. DEFAZIO. And I guess this is the diagram of how this would work. Here is the new private ATC Corporation. Now, if they make a decision over here on aviation taxes, they have to refer that to the Secretary of Transportation, who has 45 days, yea or nay.

Then it can be rejected, in which case the Corporation goes to court. Or they can be accepted, and passenger fees go up. No involvement of that messy little Congress thing in raising the fees on passengers or any other users of the system.

Now, let's say that they want to change flight paths into an airport, including a metropolitan airspace that might have some noise implications. Well, that is what you call an external diseconomy. They don't care about noise. It is cheaper to come in over this route. So there is a lot of objections to it. It goes to the Secretary, the Secretary decides it.

In any case, this is how it would all work. There is one exception for—contract air towers are exempt from this scheme. But everything else that relates to ATO would be in it, which is kind of odd that we would exempt the contract towers.

Now, I think this is a potential morass. And we did just receive—and I regret it came out today, but look, we have been talking about this for 30 years. We have had the bill 1 week, we are holding one hearing with four witnesses, and we are marking the bill up tomorrow. The largest devolution of public assets to a private interest in I said the history of America. My colleague this morning, Earl Blumenauer, said, "No, in the history of the world this is bigger than what happened in Russia when the oligarchs took over public assets."

We are talking about an asset—no one has valued it—worth between \$30 billion and \$50 billion that will be given to the private Corporation free of charge. That is unprecedented. There have been two privatizations, one privatization in Canada—they paid \$1.4 billion, it was later found that it was undervalued by about \$1 billion. I believe in Britain they paid a little over \$1 billion for it. We are going to take a much larger entity, controlling a lot of real estate, some in some very expensive areas like New York City, and we are going to give it to a private Corporation. And the day after they establish, they can do with those assets whatever they wish. They can sell them, and we have no say. That, I think, is a cause for real concern.

There are other major transition issues. Yes, there have been 81, actually, countries that have transitioned to a different form on ATO. Only two are private, unless you count the Emirates, where they control everything, including the airlines, so I won't talk about them. But there were huge transition issues in all these countries.

There is a MITRE report, which I would recommend to people to look at, which raises concerns, as was referenced, you know, ear-

lier, on how long this transition might take, and how disruptive it could be of the progress we are making on NextGen. I believe it could be very, very disruptive.

And we have today—and again, I regret it just came out today, but it is like everything else here, we have to rush for the biggest change in our aviation system since it was created in its modern form in the 1950s, which took 2 years. In 1 week and 1 day we are going to spout it out of this committee. I think that is wrong, I think we should take more time. I think we should have more discussion of these issues, I think we should have more hearings, and I think we should work through this more thoughtfully, and over a longer period of time.

The GAO [Government Accountability Office]—Mr. Chairman, you took 11 minutes and 35 seconds, so I hope you are not going to tell me to be quiet, because I am nowhere near there yet.

Mr. SHUSTER. No, wouldn't think about it.

Mr. DEFAZIO. OK, thank you, Mr. Chairman.

[Laughter]

Mr. DEFAZIO. The GAO report that came out this morning raises very, very serious questions, which will not be answered between today and tomorrow. They couldn't possibly be answered between today and tomorrow. And this is where they went out and surveyed 33 aviation experts about the privatization proposal. And again, I regret it only came out today, but this whole thing is being hurried through.

Finally, you know, the issue before us about airspace, it was a statement the chairman made—and I hate to disagree with my chairman, but if someone controls the routes, and they control the conditions under which you access those routes, and they control the investment in the system itself, which means maybe we don't want to invest in things that serve medium and small cities—they aren't profit centers; why should we be putting investment there—you know, we are keeping control of the airspace? I guess there is some technical way we are keeping control of it, but none of that will be subject to any elected Representative.

Now, in some cases, maybe that is good, and some other cases maybe that is not so good. In some cases that might be really, really bad for a certain community, parts of the country, or a certain user of the system, or maybe passengers themselves, who will perhaps now be charged a new fee for accessing the airspace over the United States. It is like you got to pay \$25 for your bag, and what is this \$10? That is for using the airspace. Nothing in this bill says that that couldn't happen. And, in fact, that would be up to the private entity.

And it is a private entity, profit or not-profit, big deal. It is a corporate, private entity. But it does have the Rube Goldberg control. Ultimately, the Secretary gets a, "No, you are not going to charge passengers \$10 to use the airspace." Then the Corporation sues the Secretary, and how long does that take in the courts, and what kind of uncertainties do we create? Same thing with any rationalization of the system, where there is a disagreement between the Secretary and the board.

So, I feel that, you know, we should perhaps slow down a little bit here, think about alternatives.

I did spend a lot of time trying to develop a freestanding Government-sponsored, or a constitutionally chartered Corporation, because the chairman tells me on his side of the aisle you can't have the word "Government," which would not have to report back to the Secretary of Transportation and have him say yea or nay on everything they do, and wouldn't have been a field day for lawyers. I couldn't generate support for that idea, and so, therefore, I will not be offering an alternative, but targeting reforms at the existing FAA in the hope of having more support for the needed reforms.

So with that, Mr. Chairman, I thank you for holding this one hearing with four witnesses, and you know, I look forward to the discussion.

Mr. SHUSTER. Well, I thank the gentleman. And just to point out, you know, this has been ongoing for 30 years. You have been here for almost 30 years, and you have been on this committee part of this discussion.

And again, we know there is serious problems at the FAA—and listening to you talk in many, many hearings about the problems. And let me just—for the record, we have had—this has been ongoing for 2 years. My colleagues on the other side were involved in many, if not all, of the discussions of stakeholders. They received the bill 10 days ago in its entirety. They have been looking, and we have—negotiating on much of the bill for months now, literally. So to say that this is—try to make this sound like it is a last-minute deal is just absolutely not the case.

The—as I said, they have had it for 10 days, and I was under the impression—I was very eager to see your concept, because it seemed to me to be similar to mine—of course, different entities, but I was eager to see that. Now we are not even going to see that.

And what we are seeing today for the first time is this Rube Goldberg chart, which I am sure, if we would have had 10 days to look at, I am sure we could debunk it in its entirety. So again, that is the last thing here.

And finally, let me just say we are having this hearing based on the request of the ranking member. He was insistent, I said, "OK, fine, it is great, let's do that. If that is important to you, then we are going to go through with this." So here we are today.

Again, I just want everybody to realize this has not been done in the dark, and it has not been done at the last minute. There has been lots and lots of discussion. And again, I think you will see other parts of the bill, that there is—their fingerprints are all over it, which is a good thing.

So with that, I recognize—

Mr. DEFAZIO. Mr. Chairman, just for a moment?

Mr. SHUSTER. Yes.

Mr. DEFAZIO. If I could, since you referenced me. Your staff has the proposal that I worked on, and we have made it available to others. So it is not a secret. So you do have it. And I tried to get discussion going about an alternative with you, with A4A [Airlines for America], with NATCA, and others. And that—the reciprocity was not forthcoming. It had to be a private Corporation.

At this point I would ask unanimous consent to include in the record written statements in opposition to the ATC privatization from the following three organizations: Delta Airlines, the Experi-

mental Aircraft Association, National Air Transport Association. In addition, I ask unanimous consent to include the following letters in opposition to ATC privatization from the bipartisan leadership of the House and Senate Appropriations Committees, 130,000 consumers, there are 28 organizations—I will not read those, I will submit them for the record.

And I would also like to enter into the record a report, “The Pitfalls of Air Traffic Control Privatization,” February 2003, commissioned by the National Air Traffic Controllers Association.

And finally, I would like to enter into the record the—today’s Government Accountability Office report on concerns they have over this proposal.

[No response.]

Mr. SHUSTER. Without objection, so ordered.

We will enter all of our organizations that support us at the end of the hearing, which I am sure is equal to or greater than the number that is there.

With that, I would like to recognize the subcommittee chairman, Mr. LoBiondo, for a statement.

Mr. LOBIONDO. Good morning. Thank you, Chairman Shuster.

As was referenced, over the last 2 years the Subcommittee on Aviation has held more than 180 listening sessions, roundtables, and hearings on the state of the Nation’s air traffic control system with stakeholders identifying the perpetual challenges the FAA has faced in modernizing the National Airspace System. And, as the chairman noticed, while we currently enjoy the safest air traffic control system in the world, it is no longer anywhere close to the most efficient.

The FAA has been attempting to modernize our safe yet antiquated ATC system since President Reagan’s first year in office. Since that time the DOT Office of Inspector General, the Government Accountability Office, and numerous bipartisan Federal airline Commissions found that the FAA’s progress with delivering planned NextGen capabilities has been plagued by significant delays, cost increases, and absence of promised benefits to the traveling public and industry stakeholders.

In testimony before the subcommittee in 2014, DOT Inspector General Scovel warned that the NextGen implementation costs for Government and industry—and this is the stuff that sort of makes your hair catch fire and your eyes pop out—initially estimated at \$20 billion for each, could double or triple. So we are talking about possibly \$40 billion or \$60 billion. And that NextGen implementation may take an additional decade. That is what is at stake here.

Since 1981 we have invested over 70—7—0—\$70 billion in taxpayer money to the air traffic control modernization, and yet we are still using essentially the same air traffic control system which is based on World War II-era technology. After \$70 billion.

While stakeholders unanimously support NextGen, they have been unable to agree on how to address these well-documented implementation obstacles. As Chairman Shuster has stated, the committee has a historic opportunity to drive the transformational change needed to ensure that we have the very best ATC system in the world.

Three years of Federal budget disputes led the FAA decision in 2013 to furlough 10 percent of its air traffic control workforce, and nearly close 149 contract towers to meet sequester-driven budgetary cuts. According to a December 2015 report by GAO, budget uncertainty has also contributed to NextGen delays and cost overruns. Continued delays resulting from sequestration, employee furloughs, unpredictable continuing resolutions, and Government shutdowns have had a devastating impact on the FAA's ability to achieve transformational results.

Only 2 months ago we were voting here again to keep the Government open while the FAA, many of my constituents, more than 3,000 working at its Technical Center in my district, were forced to make preparations in the event they needed to shelve the projects and be ready for a shutdown. That is why the AIRR Act, we worked to ensure that critical projects and safety in the skies continue without interruption.

Included in the bill, section 241, will empower rather than stifle the employees involved in ATC modernization, particularly those at the FAA Tech Center. It will allow the Corporation to utilize the resources and extensive institutional expertise of the employees of the Tech Center to improve upon the already sterling safety record that we have all come to expect.

We are the only developed country whose ATC system can be a political football, frequently held hostage to Federal budget disputes like the sequester, which threatened not only the ongoing operations of the system, but also the successful implementation of NextGen. Unless the ATC reforms in the AIRR Act are enacted, we risk failure in delivering NextGen as it was promised to the traveling public.

I look forward to hearing from our witnesses on how the ATC reforms included in the AIRR Act will ensure we have the safest, most efficient, and modernized air traffic control system in the world. And I thank you, Mr. Chairman, for the opportunity.

Mr. SHUSTER. Thank you, Mr. LoBiondo. Now I recognize the ranking member of the subcommittee, Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. And thanks for agreeing to hold this hearing, and for the opportunity to discuss the proposal to privatize the ATC system.

Before we talk about that, I do want to thank you and Chairman LoBiondo, who have worked with Ranking Member DeFazio and myself, and all the Members on every other title, as well, in the FAA reauthorization bill that was introduced last week. As a result, the bill is full of bipartisan provisions to increase airport investment, to improve U.S. manufacturers' ability to get products to market, to integrate unmanned aircraft, and to improve air service for the traveling public. A majority of the bill is a product of bipartisan efforts that will move the country's aviation system forward in a big way.

However, I still continue to believe that privatizing the ATC in the U.S. would be a science experiment with a lot of potential to go wrong. I want to highlight two areas where I think the implications of this mistake are most evident and problematic.

The first deals with NextGen. Now, while we can acknowledge that the implementation has been slow and expensive, it is now

moving forward, thanks in large part to Chairman LoBiondo's efforts. The FAA is finally reaching and passing important milestones on major industry priorities such as DataComm, multiple runway operations, and other things. So I guess I would just note that breaking apart the FAA at a time when it is making real and important strides as far as NextGen implementation would be unwise. I would say, in fact, that we are on a nonstop flight with NextGen implementation, but we are headed for a 7-year-plus lay-over with privatization.

The other area that causes me great concern, and where the proposal is only partially thought out at best, is what privatization would mean to the Department of Defense. Earlier this week I had the opportunity to speak with representatives from the Department of Defense about ATC privatization. The last conversation we had about this was in May, and the concerns have not changed. While they have a list, and I have a few of those that is in my statement there—so it is not an exhaustive list—I think it is critical for the committee to hear a few takeaways from that meeting.

First, the one thing that is clear to me about where DOD [U.S. Department of Defense] fits into ATC privatization is that we have very little clarity on this issue. DOD currently controls nearly 15 percent of the Nation's airspace. Not 15 percent of the flights, but 15 percent of the airspace. But this bill gives the Department a mere advisory role on the board of directors, a demotion from its current equal footing partnership with the FAA. The Department of Defense may have little to no say about routes and airspace because the bill does little to explain how the board would make these decisions with the DOD.

Additionally, after decades of Government-to-Government relationships, the FAA and the DOD conduct day-to-day ATC operations under the guidance of various MOUs [memorandums of understanding] and policy agreements. How would this relationship be handled under privatization? How would dispute resolution be settled? We aren't sure, because the bill is silent on these issues.

If the Corporation's goal is to maximize efficiency and reduce user fees, how would it maintain assets like primary radar that the DOD uses?

We are also—I'm not sure how special-use airspace will operate, how user fees will be charged to international state aircraft, or how joint civilian and military installations will handle air traffic. And the list doesn't stop there.

As we all know, the FAA's role in securing our national airspace is critical to homeland defense. This has been accomplished through longstanding and well-articulated agreements between the FAA and the DOD. I am concerned that entrusting this mission to a private-sector entity separate from the Government would be a reckless decision with potentially dire consequences that we may not have thought through yet, and they have not been fully aired.

DOD's role in this privatization is undeveloped, uncertain, and undermined. Giving DOD a mere advisory role with no other discussion about the challenges reminds me of the role that Coldplay had in the Super Bowl halftime show.

[Laughter]

Mr. LARSEN. Billed as a headliner, but quickly outshined. Sorry, Coldplay.

[Laughter]

Mr. LARSEN. As we sit here today, the simple fact is that privatization raises too many questions that we just cannot answer, especially 1 week after seeing the legislation. I do not see how this proposal can go through until we get clear answers on these issues.

Before this legislation moves further, this committee has responsibility to get clarity about what privatization means for national security, what impacts it could have, not on some users of the system, but on all users of the system. We haven't had those conversations, and we must.

In conclusion, I do want to reemphasize there is much to commend in this legislation. There is much bipartisan work that has been done. And, like a ship that is weighed down by an anchor so it can't go any farther, I think we should lop off the anchor of ATC privatization, and let the rest of this bill sail on.

With that, I yield back.

Mr. SHUSTER. I thank the gentleman. Now we will go to our witnesses. We will introduce all four of you first, and then let you proceed.

Joining us here today Paul Rinaldi, who is the president of the National Air Traffic Controllers Association; Nick Calio, president and chief executive officer of Airlines for America; Ed Bolen, the president and chief executive officer of the National Business Aviation Association; and Bob Poole, the director of transportation policy for the Reason Foundation.

Again, I appreciate you all being here today. I believe all four of you have been here at least once or a couple of times, and over the last decade probably many times. So, again, appreciate you being here today.

And we will start with Mr. Rinaldi.

**TESTIMONY OF PAUL RINALDI, PRESIDENT, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION; NICHOLAS E. CALIO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIRLINES FOR AMERICA; EDWARD BOLEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL BUSINESS AVIATION ASSOCIATION; AND ROBERT W. POOLE, JR., DIRECTOR OF TRANSPORTATION POLICY, REASON FOUNDATION**

Mr. RINALDI. Didn't realize I was going to be first. Thank you, Chairman Shuster, Ranking Member DeFazio, Chairman——

Mr. SHUSTER. Pull that mic up a little closer. We want to hear every word.

Mr. RINALDI. Yes? Can you hear me now?

Mr. SHUSTER. Thank you.

Mr. RINALDI. Thank you, Chairman Shuster, Ranking Member DeFazio, Chairman LoBiondo, and Ranking Member Larsen, and members of the committee. I am grateful for the opportunity to testify today as we discuss air traffic control reform and the FAA reauthorization bill, H.R. 4441.

We all have a stake in our National Airspace System. It is an economic engine, contributing \$1.5 trillion to our gross domestic product, and providing over 12 million American jobs. Currently we

run the largest, safest, most efficient, most complex, most diverse airspace system in the world. Our system is unique, unequaled, and unrivaled by any other country. This is due in large part of the impeccable work of the men and women that NATCA represents.

The United States airspace system is considered the gold standard in the world aviation community. And yet we have come to a difficult reality that change is needed. Globalization and innovation are driving some dramatic changes in the world aviation industry, and sadly, our current structure cannot keep up.

The current aviation system has served us well until recent years. Unfortunately, we no longer have a stable, predictable funding stream, and this uncertainty has caused serious problems in the system. We all remember the disruptions we experienced in 2013 with sequestration, where the FAA had to scale down all modernization projects. The agency looked at closing 238 air traffic control towers, tried to close 149 of them, not because it was safe or it was efficient, but to save money.

They continued and they stopped hiring air traffic controllers for a full year, which we still are having a problem today in our system getting air traffic controllers. And currently we are at a 27-year low of fully certified controllers. The FAA forced controllers onto furloughs, which caused rippling delay effects throughout our system. Further, the agency went to a fix-on-fail on maintenance philosophy, and stopped stockpiling critical parts of essential equipment we need for the operation. These decisions were all made to meet budget restrictions from sequestration, not for the operational reasons, and certainly not for the safety of our National Airspace System.

Mr. Chairman, our 24/7, 365-day-a-year aviation system has been challenged over the last 10 years. We have experienced 24 short-term extensions of authorization, a partial shutdown of the FAA, a complete Government shutdown, and numerous threats of Government shutdowns. Aviation safety should not come second to defunding Obamacare, Planned Parenthood, Syrian refugees, or gun control, or any other important issues that come before the body.

We should have aviation safety be the primary issue when we talk about aviation in this country. All the stakeholders in the National Airspace System should work together to ensure the United States continues to be the world leader in aviation. With all of these challenges in mind, we applaud the hard work that the members on the committee did to draft a comprehensive FAA reauthorization bill to address these longstanding problems.

NATCA has publicly stated that any FAA restructuring must achieve the following to maintain NATCA support. Any new structure must ensure that our employees are fully protected in our employment relationship. Maintaining our members' pay benefits, retirement, health care, along with our negotiated agreements for our work rules are crucial to safety of the system. Any new structure must make safety and the efficiency of the National Airspace System a priority. This means we cannot allow maintenance to lag, and cannot reduce staffing to save money.

Any new structure must have a stable, predictable funding stream, and must be adequate to support all air traffic control serv-



ices, included but not limited to staffing, hiring, training, long-term modernization projects, preventative maintenance, and modernization to our physical infrastructure. Many of our controllers are working in buildings over 50 years old.

Any new structure must improve upon the status quo by providing an environment that promotes and grows aviation in this country, that allows us to continue to provide services to all segments of the aviation community. The commercial airlines, the cargo haulers, from the business jets to the general aviation, from our major hub airports in this country to our very small, rural America airports in this country are all important to our diverse community.

NATCA supports this bill because it provides a stable, predictable funding stream, and contains necessary reforms that we believe will help us continue to run the world's safest, most efficient system. A not-for-profit, independent organization run by the board of stakeholders could deliver results similar to those we have seen in Canada.

Finally, I want to state clearly that we will continue carefully to review this legislation. If at any time there are changes to this bill, we will immediately examine them to ensure the bill continues to align with our organization's policies, practices, and principles. And, if the changes don't, we will reserve the right to withdraw our support.

I thank you for the opportunity to comment on the bill, and I look forward to answering any questions you guys may have.

Mr. SHUSTER. Thank you very much.

Next up, Nick Calio, A4A.

Mr. CALIO. Mr. Chairman and members of the committee, thank you for the opportunity to testify today. A4A commends this committee—

Mr. SHUSTER. Pull your mic as close as you can to you there.

Mr. CALIO. We got a wire problem. OK.

A4A commends this committee for the bipartisan manner in which it handles its business over the last 3 years. You repeatedly have shown that you can come together on complex issues and work together to address problems that impact the daily lives of the American people. We hope that that will be the case on this critical issue, as well, ultimately.

The committee has a historic choice. Are you going to vote to correct the shortcomings of the FAA that you have dissected in this room for years and years, or are you going to vote to continue to talk for another 30 years about the problem of a governance and funding structure that has not been working, is not now working, and will not work in the future?

A4A supports the AIRR Act, despite the fact that it has not had many things that we wanted, and has many things that we don't want, including the concern and the uncertainty of a board in which a super-majority of members are not airline. However, we do believe that this bill, if enacted, will make our air traffic control operation even better and safer than it is today.

We support the creation of a federally chartered nonprofit—and I stress "nonprofit," it is not privatized, most people who use that word want to get you to be against it—enterprise to run the air

traffic control system, because it would separate the air traffic organization from the safety regulator, and it would put the FAA in a position to do what it does best, and the Government, which is regulate safety, not run a high-tech, 24/7 service business, which is what the air traffic control operation is.

The reasons for change have been laid out before this in other committees and Congresses for over 30 years, as has been pointed out. You have held scores of hearings, hundreds of roundtables, multiple listening sessions, and directed the Office of Inspector General and the Government Accountability Office to study why the FAA has such troubles in procurement and delivering on technology.

Those studies, as well as studies by at least four presidentially appointed, nonpartisan Commissions, the National Academy of Sciences, and scores of independent private aviation experts, have all pointed to the problems that the FAA has in keeping us at the forefront of modern aviation and innovation.

It is all right here—I should say it is not all right here.

These are the studies that have been done and reported since 2005, not going back 20 years or 30 years. I couldn't bring that stack because it was taller than I am. But I brought these for a reason. They are hard to ignore. The facts are all here, and they have been discussed and discussed. And while we have been talking and talking and analyzing and debating, other developed countries have moved forward.

This bill is not proposing a radical change. Quite the contrary. It would simply put us in line with the international best practices norm that is found in over 60 developed countries who have done similar things, and since 1987. In essence, those 60 countries have done pilot programs for us. We can take best practices and lessons learned from them and apply them here. And international best practices, again, dictate the separation of the safety function from the operation of the system. Look at the other modes of transportation within the DOT. They are not like the FAA. They don't control both, it is one or the other.

More legislation, more direction, yearly appropriations—FAA authorization bills are not going to correct the problem. That has been tried for years, and it has failed. We can't simply keep rearranging the deck chairs. The DOT inspector general's report that came out in January references this. It points out that Congress has enacted legislation multiple times to try to make the FAA a performance-based organization that can deliver on the technology. It found that it really can't.

As a result, the FAA has completed multiple reorganizations. Nothing is happening. Air traffic productivity has declined, despite a greater budget. Any of the opponents of this bill who tell you differently are either not recognizing the facts, or are distorting them.

For example, some of the detractors will tell you that NextGen is getting much better, and point to the on-time performance by airlines. We would point out that, you know, block time, which is gate-to-gate flight time, is how you measure whether a flight is on time. Most, if not all of you, have flown from Washington to LaGuardia. That flight 20 years ago, when Washington and New York were the same distance apart they are now—at least to my

knowledge—was blocked for 56 minutes. Now it is blocked for 80 minutes. And that is so that flights can be on time to take care of congestion and some other issues.

Safety I am just going to mention very quickly, and then I will conclude, Mr. Chairman. International experience and best practices have shown that safety can be maintained or made better by doing what is proposed here today. The FAA itself commissioned a study by the MITRE Corporation. That study looked at six other ANSPs [air navigation service providers] across the world, many with complex airspace like the United States. It found that in every case safety was maintained and, in many cases, made better. It also found that in every single one of those cases, both the safety regulator and the operator of the system increased their focus on safety. When interviewed, all of the parties involved on both sides said they wouldn't return to the old system.

We have the opportunity here—you have the opportunity here to make a really good system that much better, cutting edge, and put us back at the forefront, where we belong in modern aviation. This is not a Democratic issue, it is not a Republican issue. It is a policy whose time has come to make our system better. Thank you.

Mr. SHUSTER. Thank you.

Next we go to Mr. Ed Bolen, president and CEO of the National Business Aviation Association.

Ed, proceed.

Mr. BOLEN. Well, thank you. I appreciate the opportunity to be here today.

It seems to me that, as we talk today about ATC reform, there are really three areas where we need to focus. First, we need to understand where we are today. Second, we need to understand where we want to be in the future. And, third, how best to get from where we are to where we want to be.

As Paul Rinaldi indicated in his statement, today the U.S. has the largest, the safest, the most diverse, the most complex, and the most efficient air transportation system in the world. It is currently enjoying the safest period of history that we have ever seen. But being the best today is not sufficient. In order for our country to thrive, we need to be the best 5, 10, 25 years from now. The question is how do we get there?

H.R. 4441, we believe, takes us down the wrong path. This bill takes our air traffic control system and turns it over to the big airlines. We think that is the wrong path. We think it is a dangerous path. We think it is a path that should be rejected, and here is why.

Our Nation's air traffic control system is a monopoly, and it will stay a monopoly, going forward. The airlines, for 30 years, have been lobbying Congress so that they can seize control of that natural monopoly and exert their authority over it. We think that is a fatally flawed concept. The public airspace belongs to the public, and it should be run for the public's benefit. Do we really think that, given control of this monopoly, the airlines would run it for every American's benefit? Reading the headlines over the past year would suggest that is probably not the case.

"Airline consolidation hits small cities the hardest," wrote the Wall Street Journal. "Justice Department investigating potential

airline price collusion,” wrote the Washington Post. “Airline complaints on the rise” was the headline in the Hill. “Airlines reap record profits and passengers get peanuts.” That appeared in the New York Times this past weekend.

Now, people have asked, “If we give control to the airlines, what protections would consumers need, small towns need, general aviation need?” But the very question itself is a tacit acknowledgment that protections are necessary. This is a little bit like someone saying, “We want to put the fox in charge of the chicken coop. What do the chickens need in order to feel comfortable with that decision?” We know that, ultimately, the fox is going to find its way around any protections, the chickens are going to be had. And when that happens, it is going to be too late to do anything about it.

When the full dangers of putting the airlines in charge of our Nation’s air traffic control monopoly are understood, Congress will be left with no resource. We need to find a way forward. Status quo is not acceptable. But turning our air traffic control system over to the airlines is just a bad idea. It is a dangerous idea. We are talking about giving them unbridled authority to make decisions about access, about rates, charges, about infrastructure. This is a sweeping transfer of authority, it is breathtaking in its magnitude, and it is potentially deadly in its consequences.

We do not want to keep the status quo. We want to move forward. We don’t want this path, however. We would advocate for targeted solutions to identified problems. We have talked about ways that we can address the funding issue. We are looking for ways to enhance business practices. We already know that the bill itself includes a lot of very important certification reforms.

As Mr. Larsen said, there is an awful lot that’s very good in this bill. There is a lot of important stuff in this bill. But at the heart of it is this sweeping transfer of authority to the airlines that we believe is a poison pill. It is a poison pill for communities, a poison pill for customers, it is a poison pill for general aviation. And no amount of sugar coating is going to change that.

We believe this portion of the bill needs to be rejected, and we need to move forward with a long-term FAA reauthorization bill that is in the best interests of all Americans, not just those in large-hub cities, but including those in small towns and rural communities that depend on access to airports and to airspace, so that we can have a strong national economy and a strong air transportation system.

Mr. SHUSTER. Thank you.

And now Bob Poole, the director of transportation policy for the Reason Foundation.

Mr. Poole, proceed.

Mr. POOLE. Thank you very much, Mr. Chairman, Ranking Member DeFazio, and Members. I have been researching the air traffic system since——

Mr. SHUSTER. Can you pull the mic up a little bit closer?

Mr. POOLE. Yes. I have been researching——

Mr. SHUSTER. Hold on a second. Are we going to turn those mics up a little bit? Good.

Mr. POOLE. I have been researching this subject since 1977, believe it or not, and have written many reports and journal articles about it. I am a member of GAO's National Aviation Studies Panel, was part of working groups on ATC reform at the Business Roundtable and at the Eno Center for Transportation.

There is a growing consensus that our ATC system no longer has the most modern equipment, the most efficient airplane routings, or the best technology. So the question before us today is what is the best way to reform the system?

Over the past 25 years, as has been said, more than 60 countries have corporatized their systems, and 51 of those are commercialized, meaning that they have separated safety regulation from ATC service provision, they are self-funding by means of customer charges to ensure independence from Government budget problems, and they are designed, basically, as a customer-serving utility. And that is a very important word, which I will get back to.

ATC is a monopoly, and there are three different ways of dealing with a monopoly: number one is a Government Corporation; number two is a private, for-profit company with rate regulation; and number three is a nonprofit, user co-op with self-regulation, because the users are basically the ones making the policy decisions on the board. These are the same three alternatives we have in public utilities in the United States, like electricity, water supply, telecommunications, so forth. There is a huge literature on how to do utilities, and these are the ways—these are the choices we have.

There have been many independent studies of the performance of these numerous—50 or so—corporatized ATC providers over the years, including two full-length academic books. All of these studies have found reduced costs, increased efficiency, better technology, and no reduction in air safety and, in many cases, improvements in air safety.

The main problems we are faced with today, as has been said, are uncertain and inadequate funding for ATC, a flawed governance model, and a status quo-oriented culture. In the study that I did for the Hudson Institute on innovation in air traffic control, 2 years ago, I concluded that the biggest of these three problems, which has not been mentioned much at all today, is the organizational culture, which is very status quo-oriented.

With inputs from a lot of current and former FAA people, my conclusion was that there are four reasons for this status quo culture in the ATO. Number one, the ATO self-identifies as a safety agency, rather than as a service provider to its customers. Number two, it has inadequate, let's say, senior management and high-technology people. Therefore, it is way overly dependent on contractors. Number three, it has excessive external oversight, as the GAO and the inspector general have reported out. The problem is called "too many cooks" to try to manage the business. And finally, a lack of customer focus. De facto, the ATO considers Congress, you folks, as its customer that it has to satisfy, rather than its aviation customers.

Based on global best practice, we now have a recipe for how to fix these problems. Number one would be to separate the air traffic organization from the safety regulators, so that an innovative culture can develop in what would then become the corporatized pro-

vider. Number two, shift to direct charging to develop a customer-provider nexus. In other words, serve the customers who are paying the bills. User pay means user say, as they say in Canada. And, third, shift the governance from numerous overseers in Government—Congress and many agencies, including OMB [Office of Management and Budget], et cetera—and shift it to a core group of knowledgeable aviation stakeholders, carefully balanced among all the different stakeholders, including those who use the system and those who make it run. The best fit for these features is the user co-op model, and the best example of that is Nav Canada.

You have two reform proposals before you today: Chairman Shuster's ATC Corporation and Ranking Member DeFazio's proposal to exempt the funding from the trust fund from sequestration and to mandate further personnel and procurement reforms. In my judgment, the Corporation plan is consistent with global best practice. It would address the funding, governance, and culture problems.

The DeFazio alternative would keep air traffic control and safety regulation in the same organization. That is problematic, because it is contrary to ICAO principles. It retains the conflict of interest between regulation and service provision, and it reinforces the identity of the ATO as a safety agency, rather than as a high-tech service business that it really is and ought to be.

There is also a major difference on funding. The Corporation would be paid by its customers, like a utility, which again would focus its attention on serving those customers. The DeFazio plan would retain funding from taxes, which means all the oversight to protect taxpayers' money would have to remain. And that is the biggest part of the problem, the "too many cooks" problem. It would also mean it is impossible to issue revenue bonds like airports can do.

I am also dubious about further mandates for procurement and personnel reform. We know previous reforms like that have failed, but we have seen transformation in country after country that have converted ATC systems to corporate forms. I would rather go with what has been shown to work than what has been shown to fail.

To sum up, the ATC Corporation proposal is based on global best practices. Arm's-length safety regulation is a precondition for developing the kind of innovative technology culture that our system needs to have to go forward and retain its status as the best in the world. Self-funding would free the company from budget constraints and allow it to issue revenue bonds as airports do.

In reaching this conclusion—last point—I am most impressed by the findings of aviation professionals who know the system better than you or I know it. That includes the controller's union, obviously, represented by Paul Rinaldi here today. But it also includes all three people who served as chief operating officers of the ATO. Each of them tried very hard and very diligently to run the ATO as a business, and concluded that it was simply not possible, given the institutional constraints of being trapped inside a large tax-funded bureaucracy. I take their judgment very seriously, and I hope you will, also. Thank you very much.

Mr. SHUSTER. Thank you very much, Mr. Poole. And now we will go to questions. I want everybody to keep it to 5 minutes so we can

get through as many questions as possible. And, if need be, we can go to a second round. And I will start.

Mr. Bolen, first, I would say to you that saying it is efficient, the numbers just don't bear out. Delays have increased over the years, and especially at our big airports. Flight times between cities has increased because of the system. And you go on and on about the efficiencies. It is becoming less efficient, from what I can see from these studies I have, and I am sure that that pile there on the desk is—would bear that out, also.

And to say that the airlines are taking over this Corporation, I—there is an 11-member board. The GA community gets two seats, the Government gets two seats, the airlines get four, which is not a majority. ALPA [Air Line Pilots Association, International] gets one, NATCA gets one, and then there is a CEO. So I am—how do you—if they don't have a majority on the board, how do they gain control of the board, in your view?

Mr. BOLEN. Well, I think, as you indicated, the board itself starts with 10 people who then hire a chief executive officer. In most corporations, 30 percent or more is considered effective control. Here we start with the airlines controlling four seats. We then have the airline pilots. So airlines and their employees control five seats. We will then have people who are nominated to the board. Potentially, they could have airline backgrounds. And then this group will hire the CEO. So I think it is, by any definition, effective control of the system.

I just want to go back and touch on the flight delays between two cities. It is my understanding that a lot of the block times were increased because 20 years ago, 10 years ago, there was a lot of advantage for companies putting in the block times with the shortest terms possible, so that their flights would appear at the top of the computer reservation scheme. Today there is much more focus on predictability. So some of that gaming of the system and saying what the flight times would be to get a bump up in the computer system is now gone away.

Mr. SHUSTER. And so today I was hoping we would have two comprehensive proposals to look at, but unfortunately we have one, and it is the one that we have presented.

So you don't like what we have, so what is your proposal? What would you do to change the system, strengthen the system? You say you don't want status quo, so what would be your proposal to change the system for the better?

Mr. BOLEN. Well, I think the idea of strengthening the funding stream is key. That has been identified by everyone at the table as a challenge.

Mr. SHUSTER. The funding stream?

Mr. BOLEN. Yes. And I think that can be addressed. If you look at the revenues that come in today through the dedicated aviation taxes, that provides a very strong revenue stream. It seems to me that the revenues that are generated by a dedicated tax on aviation could and should be used for the purpose for which they were intended.

So I think you could require mandatory spending, or automatic appropriations from the revenues that are coming in from the trust fund. And I think that would provide a strong base. I think you can

also pass a long-term reauthorization bill. That would address some of the lapses that have been talked about. I think you could take steps to identify the U.S. air transportation system as fundamental to safety, so that it is not subject to some of the shutdowns that have been talked about.

In terms of management practices, I think we can do more to enhance performance, procurement, and accountability. And I think we can create a board that can focus on those things.

And then you have already addressed the certification, and I think that is a key part. You know, our members fly all over the world. And so they use all of those air traffic systems. And to a member, they believe that flying in the U.S. is the best system in the world. But they are very frustrated with other parts of the FAA, the approval parts, the certification parts.

We have an opportunity in this bill to address what is broken in the FAA. The air traffic control system is currently—as has been described—the gold standard, and progress is being made moving forward. So I think we are focusing on the wrong part of the FAA in this bill.

Mr. SHUSTER. Well, what you have just described is what we have been talking about for the last 30 years, and there is—I think that is only—they said only 10 years of reports. We have tried those things over and over, and so I just believe the time is now where you have got to do something fundamentally different to be able to achieve some of those things that you said, because it hasn't been done. It just hasn't been done.

We can sit here, and we can keep talking about it. And if we don't do something like this, my guess is 10 years from now some of you guys will still be here, and ladies will still be here, you will be talking about the same thing.

Bob, I am sorry, I thought you had only been working on this for 30 years. You have been working on it for 40 years. So again, this—the time has come. And Bob, if you could just talk a little bit about—Mr. Poole, what do you think the cost in an organization like this—based on your study, is it going to go down? Is it going to go up?

Mr. POOLE. Well, I think the cost should—the unit cost should come down. There are—we know there are economies of scale in air traffic control. The larger the number of transactions, the more you can spread fixed costs over a larger number of customers. So, we should have the lowest unit costs of any air traffic system in the world. We don't. We have a decent level of productivity. But Nav Canada, with one-ninth the number of transactions, has a lower unit cost than we do.

And so, that suggests to me there is large potential for cost savings for a more efficient and productive system—new technology is really the key to that, but it also depends on an organizational culture that says we want to do what is best for our customers. That means that we are going to do the service at the lowest cost possible, given adequate safety improvements. You know, safety should only get better. It should definitely not get worse.

But if your goal is to serve the customers in the most cost-effective way, now that would drive reflection of how you use technology to get the most bang for the buck.



Mr. SHUSTER. So, with Nav Canada deploying their technology, their GPS-based system, by the end of 2017, that will allow them to get even more planes into their space, which should drive down their costs even greater.

Mr. POOLE. Absolutely, and that is true globally, as you mentioned in your opening comments. The satellite-based ADS-B is going to mean we can have radar-like separation over all of the world's oceans, where it is impossible to have radar, and that means more flight tracks closer together safely, so that planes can fly at the optimum altitudes, and so forth.

Mr. SHUSTER. Thank you very much. With that, I recognize Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. The—we have put \$53 billion into the facilities and equipment over the last 20 years. And, as I mentioned earlier, we are going to give that asset to a private Corporation for no remuneration. And I would say that that has been paid disproportionately by passengers, taxpayers of the United States of America who are passengers on airlines. They—the ticket tax is the disproportionate amount.

Yet there is no consumer or passenger rep on the board. And this is a yes-or-no question: Do you believe there should be a consumer passenger representative on this board? Yes or no, Mr. Calio? You can pass if—it is yes or no or pass.

Mr. CALIO. I am not going to do a yes or no—

Mr. DEFAZIO. OK. All right, then—

Mr. CALIO. That doesn't show anything, Mr. DeFazio.

Mr. DEFAZIO. Then on—Mr. Rinaldi, yes or no?

Mr. RINALDI. I would be OK with it.

Mr. DEFAZIO. I am sorry?

Mr. RINALDI. I would be OK with it.

Mr. DEFAZIO. OK.

Mr. POOLE. Yes, and I think that the Secretary is going to appoint such people.

Mr. DEFAZIO. Well, that depends upon the Secretary. Mr. Bolen?

Mr. BOLEN. I don't think there should be a board. I think the public airspace should be governed by the public's elected officials—

Mr. DEFAZIO. So you didn't—OK. All right, you got around the question, too. All right.

[Laughter]

Mr. DEFAZIO. But in any case, so—all right. Now, let's go to another issue that is of tremendous concern, representing a smaller airport.

The GAO report—which, again, I apologize, people haven't had a chance to read, but since today is the only hearing, tomorrow is the markup—one of the points they make is that small and rural communities could be negatively affected under this construct, and they go on to say, "In the case of the Canadian restructure, Canada's law addresses this issue by providing protections for designated services in northern or remote areas." This bill has no such provisions.

There will be another yes-or-no answer here in a second.

So Robin Hayes, JetBlue CEO, said the Corporation “would direct infrastructure improvements to regions of the country where they will produce the most benefits, like the Northeast.”

Jeff Smisek said, “United’s domestic network would be only as big as necessary to feed its international network.”

Now, does that sound like we are going to have a comprehensive system that serves everybody and everybody’s interests, and everybody’s interests are protected?

I will start with you, Mr. Bolen, yes or no.

Mr. BOLEN. No.

Mr. DEFAZIO. Come on.

Mr. POOLE. No, but I think——

Mr. DEFAZIO. OK, that is good——

Mr. POOLE. That is an airline——

Mr. DEFAZIO. We only have 5 minutes. So yes, Mr. Rinaldi?

Mr. RINALDI. What you quoted, no, but I don’t believe——

Mr. DEFAZIO. OK.

Mr. RINALDI. That is just the opinion of airline CEOs.

Mr. DEFAZIO. Yes, that is right. And they only have four seats on the board.

Mr. Calio?

Mr. CALIO. No.

Mr. DEFAZIO. OK, thank you. That is good. All right.

Let’s move on to air traffic control, because we are talking about—now, you know, one of the issues—and I would be interested how the board might deal with this, and this is a quote from Randy Babbitt. And you can talk about satellite base, you can talk about the spiffiest system in the world. “We can do everything in the world, but at the end of the day at LaGuardia Airport where it is a one-runway operation, you can still only land them once every 54 seconds.” And he goes on to talk about airlines opposing PFCs [passenger facility charges] and that. We won’t get into that debate today.

But the point is this new board is going to have—want to make the system more efficient. Regional airlines, of course, are opposed. What would happen if the board said, “You can’t land a plane that had—carries less than X-number of passengers at LaGuardia Airport,” essentially putting the regional airlines out of business? Is that possible, under this construct? Yes or no.

Mr. BOLEN. Yes, it is, and that is one of our fundamental concerns about it.

Mr. DEFAZIO. Yes. Mr. Poole?

Mr. POOLE. I don’t think so, because I think that is an airport question——

Mr. DEFAZIO. Well, yes, OK, you don’t think so, but you won’t—Mr. Rinaldi?

Mr. RINALDI. I don’t believe it is.

Mr. DEFAZIO. OK. What?

Mr. CALIO. No, it is not possible.

Mr. DEFAZIO. OK. It is not possible? OK. Then——

Mr. CALIO. No. Under Federal regulations, it is not.

Mr. DEFAZIO. OK. Well, good. Then wouldn’t—let’s go back to my previous point. Would any of you support the provision that we have in Canada, which says, on a statutory basis, their law ad-

addressed the issue for protections for designated services in northern remote areas. Should we adopt something similar for small and medium airports in the United States of America? Yes or no.

Mr. BOLEN. I think we should have as many protections as possible, and I am not sure those protections are going to be sufficient—

Mr. DEFAZIO. OK. Mr. Poole?

Mr. POOLE. Yes.

Mr. DEFAZIO. OK. Mr. Rinaldi?

Mr. RINALDI. Yes, of course.

Mr. CALIO. For remote areas? Yes.

Mr. DEFAZIO. Well, we didn't get remote, I want to go beyond remote.

OK, all right. Let's move on now to the issue of, you know, getting new technology on board. Where is that? Quickly, quickly, quickly. Sorry, I—you know, I haven't figured out how to write notes on my iPad yesterday, and you know, on the text of your statements. Well, never mind, we can't find that one right now. I will get it my next round.

Let's go to another one. So we are creating—we are always—you know, here we are really upset about things that are too big to fail, and I couldn't create a Government Corporation because that would be like Fannie Mae, Freddie Mac, any of those GSEs, whatever, we can't have that because we have to bail them out. Well, what happens if this system goes insolvent? Wouldn't you say that the air traffic control of the movement of goods and people across the United States of America is too big to fail, that it is an absolutely essential service, and if it became insolvent Congress would have no option but to bail it out, as happened in Great Britain after it was privatized?

Mr. Bolen, yes or no?

Mr. BOLEN. Yes.

Mr. DEFAZIO. Mr. Poole?

Mr. POOLE. No.

Mr. DEFAZIO. We wouldn't bail it out? We would just let it shut down?

Mr. POOLE. No, no, no—

Mr. DEFAZIO. OK, good—

Mr. POOLE. The customers would have to pay more.

Mr. DEFAZIO. Well, oh, the customers would have to pay more. OK. What if the Secretary disapproves that?

Mr. Rinaldi?

Mr. RINALDI. Yes.

Mr. CALIO. No.

Mr. DEFAZIO. No? OK. So we have some disagreement there. So we are creating something that is too big to fail. In the case of Great Britain, because of a downturn in air traffic, they had to bail it out. Mr. Poole says we shouldn't bail it out, they should just raise fees. But as we saw in the Rube Goldberg construct, if you raise fees—for instance, you want to charge passengers for using the airspace over the United States—the Secretary has to approve it.

Bernie Sanders, Secretary of Transportation, says, "Hell no, we are not going to charge people to use the airspace of the United

States.” We have an impasse here. So, you know, I think there are a lot of unanswered questions.

I am over my time—thank you, Mr. Chairman, for your indulgence. And we will get to another round.

Mr. SHUSTER. I thank the gentleman. Again, yes-or-no answers I don’t think really give the witnesses a fair and constructive hearing here. I mean you wanted a hearing, Mr. DeFazio, you have got a hearing.

Mr. DEFAZIO. I am trying to—questions, Mr. Chairman—

Mr. SHUSTER. Well, Mr.—those aren’t—you are trying to—

Mr. DEFAZIO. Mr. Chairman, when we have—

Mr. SHUSTER [continuing]. Get a yes or no—

Mr. DEFAZIO. When I have four witnesses and 5 minutes, I have got to get a lot of questions in, Mr. Chairman.

Mr. SHUSTER. Mr. DeFazio, you know very well the way I operate. You will get your opportunity. Let these folks answer the question, because they are not yes-or-no answers in many cases.

For instance, we do not discriminate against—we say in this you can’t discriminate to—air access. We also, in rural areas—you know, the technology that Sweden uses today, they have these rural airports that aren’t—they don’t need a controller. The technology is there. We are incapable of doing that today, stuck in this system that doesn’t work.

So, again, I will give you ample time, but just please allow these people to give you an answer that is—there is not a yes-or-no answer. So let’s move on.

Yes, I will give someone—answer to Mr. Calio, you started to—

Mr. YOUNG. Yes, look, but the time is over.

Mr. SHUSTER. Well, the good news about—I am the chairman, I get to decide when the time is—

Mr. YOUNG. Yes, I realize that, but—

Mr. SHUSTER. So, Mr. Calio, you were questioned on—you were going to make an answer. Could you expound upon any of those ones that you wanted to?

Mr. CALIO. To be honest, they came so fast I can’t remember which one it was.

[Laughter]

Mr. SHUSTER. OK. Well, Mr. Bolen, in all fairness, is there any one that you—you had a couple yes-or-noes. Is there any one you want to expand on and say why, one way or the other?

Mr. BOLEN. Well, we are concerned about rural access to all of this. I mean what we are—have been told is that this new system is going to save billions of dollars. We have not seen where services and equipment are going to be cut. We haven’t seen where jobs are going to be lost.

When we look at the protections today, as I understand them about access to airports, the protection is only based on the rates and charges one pays. This says nothing about the size of the airplane, the type of operation it is. We have seen in other parts of the world where commercial airplanes have priority over non-commercial airplanes, and there are a number of other ways that discrimination can take place. So that is a concern—

Mr. SHUSTER. OK, we put in there that we don’t want to see that discrimination occur. And again, it is—where are jobs going to be

gained, where is technology going to be gained, that is the other side of the coin. And that is what I am actually focusing on, looking forward.

With that, I will go to Mr. Young, Chairman Young.

Mr. YOUNG. Thank you, Mr. Chairman. I want to ask every one of these Members in this room, on this committee, how many of you are happy with the airline that serves you—is happy with the airline that serves you now? You are happy with the one that serves—two?

[Laughter]

Mr. YOUNG. I mean I am bringing out a point. This is on the board. Four members from—airlines, there is not one of us really happy with the airlines. Alaska Airlines does the best job, that is recorded. But just think about that when we organize this bill, when we deal this bill in creating the board.

Now I am personally involved in this legislation. If anyone's State is affected by this legislation, it is Alaska. You take all the land east of the Mississippi to the tip of Maine to the tip of Florida, that is Alaska, part of it. And you have 253 congressmen and 52 Senators in that area. And in this bill we eliminate—they say you do not—eliminate essential air service. In a sense I have to take and fight each year to get appropriations to fund it. And that is wrong. I have told the chairman of this. Essential air service is crucial to my State.

Second part is if we take—the 135s are exempted or not exempted from the taxes. That is what serves my community. I don't have highways, I don't have streets. I have got air. And what this bill does, a lot of—in this bill is good, Mr. Chairman, I will admit that. I have gone through it. FAA has got too big, and they are incestuously created. They have been around too long and they get involved in golf courses, getting involved in some silly-ass things that have nothing to do with safety, and that has to be changed.

But the idea we are going to penalize a State—and I have asked you to exempt Alaska. Don't just give it to the big airlines, because what will happen is the consumer will not be served correctly.

We started out, when I first got elected, we had 29 airlines. We have got basically four now. Four. And if they are going to run this FAA, I don't think the consumer is going to get the right representation on that board. I am glad to hear the witnesses say that they would support at least a consumer being on that board. And that is for the airlines.

Mr. Chairman, I will say again this bill, if it is not fixed, I am not going to support it. It had better be fixed. I yield back.

Mr. SHUSTER. Thank you, Mr. Chairman. And I just want to point out—a couple times mentioned about the board makeup. There are two seats for the Government, public interest. That is where we believe the public interest will be served with our voice there.

Mr. YOUNG. Will the gentleman yield? Let's talk about the board.

Mr. SHUSTER. Certainly.

Mr. YOUNG. You got four big airlines as board members. NATCA now is supporting it. And I question that, by the way. I fought for you every inch of the way, and we want to find out what is behind that.

General aviation has one. Two? General aviation has two. OK, two. What is the other one?

Mr. SHUSTER. Two to the Government.

Mr. YOUNG. Two—and who are they going to be? Do we have any input on that? No. We do not. The President has—

Mr. SHUSTER. The Department of Transportation will have it.

Mr. YOUNG. The President. And we are the Congress of the United States. I would feel a lot better if we were to appoint them. Why should we let a President appoint them? This is our job as legislators.

If we are going to change the system, let us change it with us having some control over it, financially. And the board members should be appointed from the Congress. I am not going to give any President any more authority. That is the wrong—we have done this over and over again. We give the President—we might as well have a king. I don't want a king.

Mr. SHUSTER. Claiming back my time. With that, Ms. Norton is recognized.

Ms. NORTON. Let me say the point that the gentleman from Alaska was making is that there is no requirement that there be a member of the public, or a consumer, on the board. There may be, but a President may decide that, "With all these experts on the board, I better make sure that I have my own expert." So there is no requirement. That could have been in the bill.

Mr. Rinaldi went down a list of problems with which I could not be more sympathetic, but they are congressionally inflicted problems: sequester and shutdown and the appropriation process. So what we have in this bill is that the FAA, not the Congress, should change. And the frustration with the Congress—and, for that matter, even with NextGen—is well placed, although we see some movement on NextGen.

So, I want to say I appreciate how the chairman has reached out to the minority so that there are provisions in here with which I agree. And I understand the frustration. And I don't believe that there is any case to be made for the problem—FAA. I really don't. But its dysfunction does not make the case for this proposal.

What is most surprising to me—because I am trying to find out how this would work in practice—what is most surprising to me is how it encourages litigation. The last thing I would have expected from my friends on the other side is a system that said, "Hey, sue me if you don't like it," and that is essentially—and I want to ask you about this—that is essentially what I think it says.

If the Secretary—you can go to the Secretary. If the Secretary disagrees, and you can't reach some agreement, then somebody has got to bring a court suit. So it goes to another part of our separation-of-powers system that is the judiciary, which is the slowest, and the framers made it the slowest on purpose. I am trying to find out how this thing would work. How does this creature work?

For example, there is a problem in this region, the District of Columbia/Maryland/Virginia, of unbearable noise. So we go to the FAA. Actually, they have some powers. They can issue rules. There are things they can do. I don't like the fact that there is not a fire-wall between them—that gets into legal technicalities.

So how would this work? Is there rulemaking power here? Does it have the same presumption of—that unless it is arbitrary, it goes into effect? Because that is how the courts operate it when it is an agency. So how does it work?

I am a member of the public that can't stand this noise. Actually, that is the case all over America now. Would somebody tell me how I get this Corporation to respond to that consumer problem that is now plaguing all parts of the United States?

[No response.]

Ms. NORTON. Somebody speak up.

Mr. SHUSTER. Well, what is your question?

Ms. NORTON. My question is how would this——

Mr. SHUSTER. To the noise?

Ms. NORTON. How would one get from this body a remedy for this problem? I am asking——

Mr. SHUSTER. I missed the problem. What——

Ms. NORTON. Rulemaking authority? I am asking——

Mr. SHUSTER. Is that a noise problem?

Ms. NORTON. I am giving that as an example.

Mr. SHUSTER. We have in the bill that—remedies to have the community be involved to make sure that, if there is noise problems, that they are going to be addressed——

Ms. NORTON. Mr. Chairman, only because that is in my district—I am trying to ask how the public addresses this agency. I know how it addresses the FAA. I know how the FAA communicates the rulemaking, et cetera. I am trying to find—suppose it is with NextGen, whatever they are doing. How do I approach this agency, and how do the courts respond?

Mr. BOLEN. Well, the bill itself is very vague.

My understanding is that it appears to be largely modeled after Canada. I had an opportunity to visit Nav Canada last summer. We asked specifically about concerns like that, noise concerns, for example. We were told that they have an opportunity to call up and register their concern, and that is the end of it.

We see that they also have that ability in determining levels of service and in rates and charges in Canada. They put forward, "Here is what we want to do," and as long as they follow the methodology that they said that they would follow, then there is no real appeal to that.

So we think you are raising a concern that is very important.

Mr. SHUSTER. Will the gentlelady yield?

Ms. NORTON. I would be pleased to yield to the gentleman.

Mr. SHUSTER. It is in the bill that we get communities involved in these decisions. But at the end of the day, as we have pointed out, the FAA, which—back at Government, the regulator—would be involved in this, similar to the way it is today.

Ms. NORTON. That is what I am trying to find—I was just trying to find out the mechanism. I know how I approach the FAA.

Mr. SHUSTER. That——

Ms. NORTON. I don't know how I would approach this entity.

Mr. SHUSTER. You would approach the FAA like you do today in this situation——

Ms. NORTON. Well, you know, they might issue a rule. Can they issue a rule? Can this entity issue a rule?

Mr. SHUSTER. No. They are not—it is not a regulating body. It is a service provider. It is a service provider that will manage the airspace.

When it comes to safety and regulatory things, it goes back to the governmental body. So if there is an issue like that—and hopefully they can work through the process with the airlines on a noise problem, for instance, because I know we got noise problems in many cities—but at the end of the day it would go back to the regulator, and the regulator is the FAA in Government.

Ms. NORTON. You see, Mr. Chairman, then we still have them mixed together, and the public doesn't know, really, to whom do I go to get, for example, a NextGen remedy.

You know, most of the noise is NextGen—is a NextGen problem. And if it is this entity that is going to revise NextGen, I would think I should go to them to talk to them.

Mr. SHUSTER. Well, NextGen would—because of a—because of the reduction in the way that people are able to land, you would have less noise, we believe. But also, if there is a remedy needed, just as there is today, you go back to the regulator, and that would be the FAA that remains in Government. This is not a regulatory body, it is a service provider.

And with that, I yield to Mr. Mica, Chairman Mica.

Mr. MICA. Well, thank you, Mr. Chairman. And I salute you. Also Mr. LoBiondo. You have taken on a tough challenge. We have tried to do this over the past three decades, as you have heard.

Everybody is in agreement that FAA, as it is currently structured to oversee and operate air traffic control, is dysfunctional. I think we are living on borrowed time. We are going to have a major incident.

At the bottom of the barrel are our air traffic controllers. The working conditions for our air traffic controllers are shameful.

You were in Canada, you said, Mr. Bolen. Some of you have been there. We are so far behind. The way we treat our air traffic controllers—I used to have to go out—and I know they still have the same lousy working conditions. I remember going to, like, the Atlanta TRACON [Terminal Radar Approach Control], mold growing there. That is no way to run a system in the 21st century, in 2016.

Now, we have some disagreement on how we restructure this. And we have got to come together, guys.

Mr. Poole, we are falling further and further behind, internationally. I don't want to adopt the Canadian system, I don't want the German system, I don't want the U.K. system. We need a system design that works for the United States. Right? And this is important, economically. If we lose our edge here, we will lose manufacturing. We will lose technology. We will lose opportunities for employment. And we will be left behind.

We are still writing a—aren't we, Mr. Poole, a ground—1950s radar-based system, and the rest of the world is looking at—

Mr. POOLE. Essentially, yes. I mean we have paper flight strips and—

Mr. MICA. Yes. Here, here. I held this up at the press conference. Here is my—this—Mr. Rinaldi, isn't this what we are operating with, paper strips?

Mr. RINALDI. Yes, it is.



Mr. MICA. It is shameful. Now, I know there is disagreement. Some of you are getting pressure. The biggest pressure is probably general aviation, and they want to be treated fairly.

Mr. Bolen, if we can come up with something that satisfies your concern about the financing not going into user fees or not overburdening general aviation, could you cooperate?

Mr. BOLEN. A couple weeks ago, 15 general aviation associations—

Mr. MICA. No—

Mr. BOLEN [continuing]. Sent a letter saying that our concerns about—

Mr. MICA. I know, but—

Mr. BOLEN [continuing]. This go well beyond—

Mr. MICA. OK—

Mr. BOLEN [continuing]. The fee issue.

Mr. MICA. And if some of the—

Mr. BOLEN. And get to the structure.

Mr. MICA. Well, currently—Mr. Calio, the commercial aviation, passenger aviation, you are 7.5 percent, and the other money you put into the trust fund is about 94 percent, is that correct?

Mr. CALIO. Yes, Mr. Mica, it is.

Mr. MICA. And what percentage of the flights in the airspace do you have?

Mr. CALIO. Seventy-seven percent.

Mr. MICA. And general aviation, what do you contribute financially?

Mr. BOLEN. Financially, the last time we saw IRS [Internal Revenue Service] records was 8.5 percent.

Mr. MICA. And what number of flights do you have?

Mr. BOLEN. Well, we have, depending on how you look at the controlled flights, somewhere between 17 and 22 percent, and that is—

Mr. MICA. But we—

Mr. BOLEN [continuing]. ICAO has said you look at—

Mr. MICA. We can come up with a fairness ratio. We can guarantee that we are not going to overburden general aviation and have the user pay a fair fee. You don't want it to be a user fee, but you pay through primarily fuel tax, right?

Mr. BOLEN. Yes. But again, our concerns go well beyond the fee structure and get to who is in control of the airspace. We believe that the airlines—

Mr. MICA. So you would like better representation, too. That is another element that you would like to see on the proposed board, right?

Mr. BOLEN. Again, we—

Mr. MICA. Yes or no? I mean—

Mr. BOLEN. We think this is a fundamentally flawed—

Mr. MICA. No. Again, what do you want? Don't tell me it is fundamentally flawed. I am trying to put together something that will work. You have got an air traffic system that is headed for disaster. It is going to happen, I am telling you.

Tell us what you want. So something in finance, better financing, a guarantee, and then you want better representation. Those are

a couple major things gathered from your testimony and what I have seen. Right?

Mr. BOLEN. Ensuring public access——

Mr. MICA. Yes, and public access——

Mr. BOLEN [continuing]. To airports and airspace is fundamental, ensuring——

Mr. MICA. OK. Well, what I want from you guys to give to the chairman—the two chairmen and Mr. DeFazio—is the positive things that we can agree on. We have got to make a good attempt to get this done.

I am telling you, you are living on borrowed time. This is not fair to our air traffic controllers. We are using paper slips, technology that is dated back to the 1960s and 1970s that should be replaced. The system is on the verge of melting down.

And then to—the biggest concern I have is also losing our place. Right, Mr. Poole? Say it again to these folks, because they don't seem to get it, not only that unsafe system behind the technology, but as far as our place in aviation, which we have always led, we will not lead. Is that correct, or——

Mr. POOLE. We are not leading it today, for example, in space-based——

Mr. MICA. Exactly, exactly.

Mr. POOLE [continuing]. ADS-B and in DataComm.

Mr. MICA. I yield back the balance of my time, and I look forward to working with the chairman. Bring these guys together and Members. We have got to get it right. Amen.

Mr. SHUSTER. Thank you, Mr. Mica. And I just want to make it clear to all the Members. I know some of you have had ample time, some of you may not have looked at it.

But just to be very clear on this, in the business jet community, the general aviation community, there is basically three tranches of them. There is the single-piston folks that—they are going to pay the gas tax they pay today. We have said we are not changing that. And the business jet folks, the folks that Mr. Bolen represents, we have said the same to them. You pay a gas tax, that is where you are going to pay. So that is really unchanged for them. The third piece of that is what you call part 135, it is the—and those two, they are noncommercial, which I just named.

Then, if you become a commercial operator, and you want to get passengers and make a profit, what you do today is you pay a ticket tax, a segment tax, and a gas tax. What we have said to that is we are going to do away with the segment and the ticket tax, and you would pay the user fee based on your weight and distance, which we think is fair.

There is some notion out there that they are going to raise the user fee so high that a fellow or woman who wants to fly a G5 or a G6 is going to be forced to fly first class on an airline. I just cannot imagine that is going to happen.

Now, the issue Mr. Bolen does bring up, airspace, we have to make sure that the airspace—there is access to it. I have got about maybe three people that work in the airlines in my district. I have got several hundred GA pilots. I am from a rural area, I have a rural airport. So we want to take care of rural airports, we want to make sure that we don't harm the general aviation community.

So those of you that haven't really looked at the structure of what we are doing, funding-wise, that is what we are doing to the general aviation community, and I think it is more than fair, what we are—what we have proposed.

So, with that, go to Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, just 2 months ago this committee enacted a major surface transportation bill that made significant improvements to our highway transit and rail system. That bill was developed in a bipartisan manner and passed overwhelmingly.

Unfortunately, this FAA bill represents a departure from the bipartisan tradition of this committee that has been successful under Chairman Shuster's leadership, and will set—

Mr. SHUSTER. Would you yield for just a second?

Mr. NADLER. Yes.

Mr. SHUSTER. I would object to that. We have done—much of this bill is done on a very bipartisan basis.

Mr. NADLER. Reclaiming my—

Mr. SHUSTER. We have fundamental difference on policy, but—

Mr. NADLER. Reclaiming my time—

Mr. SHUSTER [continuing]. Bipartisan.

Mr. NADLER [continuing]. Much of the bill has, but everything is overshadowed by privatization of the air traffic control system, and will set back our efforts to modernize our aviation system and ensure the safety of the flying public.

This air traffic control privatization scheme is an extreme and risky venture that will hand over control of our airspace, in effect, to the major airlines.

One of the stated motivations is that we need to speed up modernizing our airspace and the installation of NextGen technology. But progress is finally being made on that front. Completely disrupting the ATC system and splitting up the FAA will probably set back NextGen implementation by quite a few years. So modernization cannot be the real motivation.

The other stated reason some support this plan is to preclude furloughs and delays caused by budget cuts and possible Government shutdowns. There is, of course, a much safer and simpler solution: Just don't shut down the Government.

Nor should we risk the safety of the flying public because a few Members of Congress and Senators—arguably, one Senator who is just leaving New Hampshire—want to impose drastic budget cuts, or hold the budget hostage in an attempt to enact an extreme agenda. And even if this plan were to go through, the rest of the FAA, including safety inspectors, would still be vulnerable to sequestrations and shutdowns.

And how can citizens talk to or influence or pressure—effectively pressure this Corporation? I know they can be heard, but they will be ignored with respect to noise or other problems.

Mr. DeFazio and Mr. Larsen have offered reasonable solutions to address any legitimate concerns that have been raised with respect to airspace modernization and budget uncertainty, but so far their suggestions have been rejected, which leaves us the only real reason a simple—which only leaves us the real reason: a simple, ideological devotion to privatizing everything, and eliminating as much

Government as possible. If air traffic control isn't an inherently Government function, what is?

Proponents of the bill would give away billions of dollars in taxpayer-funded assets to the airlines. The FAA—and thus, Federal taxpayers—have invested at least \$53 billion over the past 20 years in capital investments in these assets. Some of the same Members who complain about the deficit and rail against Federal spending are perfectly willing to give away \$53 billion of Government property to private companies as a gift. That is more than we spent on the entire NIH [National Institutes of Health] budget last year. That is more than we spent last year on the TSA [Transportation Security Administration], VA [Department of Veterans Affairs] medical services, clean water and drinking funds, section 8, Head Start, energy efficiency, and violence against women combined.

We can't provide \$600 million to the Flint water crisis, but we can give away \$53 billion to the airlines? This bill goes beyond the public policy disagreement. It is a complete special interest giveaway.

Supporters of the bill will claim that ATC will be managed by a nonprofit entity. But make no mistake, this so-called nonprofit will be dominated by for-profit airlines. The same companies that nickel-and-dime passengers for baggage and leg room will be making decisions about routes, and taxing the public to manage the airspace.

Luckily, there are many groups and Members on both sides of the aisle in both chambers who see this plan for what it is, and it is worth commending Delta Airlines for acting responsibly, and outlining numerous concerns with this privatization scheme in a very detailed letter referenced by Mr. DeFazio.

As Delta points out, the U.S. has over 13,000 airports and about 7,000 aircraft in flight at any one time. U.S. airspace is dense, congested, diverse, and unique. Privatization has never been attempted in airspace of this nature, nor should it be. Performing an unprecedented and uncontrolled experiment on the American flying public will be risky, unsafe, and unfair to the flying public and to taxpayers.

Mr. Calio, the U.K. and Canada have been cited as examples of where privatization has been done before. But they both receive payment for ATC facilities and equipment they transferred to the private corporation. Is privatization so important? Would the airlines be willing to reimburse the Federal taxpayers for the fair market value of the physical—of the assets being transferred, in effect, to them?

Mr. CALIO. It is true that the—there was a reimbursement. It was about \$1 billion in the U.K., \$1.4 billion in Canada. I would point out, Mr. Nadler, that the airlines aren't going to run this new entity. It is going to be a variety—

Mr. NADLER. But they will dominate it, effectively.

Mr. CALIO. I don't believe that is true. I—

Mr. NADLER. All right. We can dispute that. But I asked you a simple question. Would the airlines be willing to reimburse—or would this company reimburse the Federal Government over time \$53 billion, or whatever the fair market value—

Mr. CALIO. I think it is the beginning of the process, and that could be determined down the line. I think you would have to look—

Mr. NADLER. Would you support that in the legislation?

Mr. CALIO. No. Airline passengers—

Mr. NADLER. OK, thank you.

Mr. CALIO [continuing]. Will pay for—

Mr. NADLER. Mr. Bolen, I have—I am concerned about how consumers will fare under this proposal. It seems consumers will have no recourse under this system that would be heavily dominated and controlled by the commercial airlines.

How would the Republican—how would this proposal ensure that the commercial airlines are not able to collude, reduce capacity, and close out competition? What specific safeguards are in place to ensure that this cannot happen?

Mr. BOLEN. I think a lot of the protections are supposed to come later. These are things that the board itself, I believe, is supposed to develop. But I—

Mr. NADLER. Supposed to develop. But nothing is guaranteed.

Mr. BOLEN. I think that is a legitimate concern.

Mr. NADLER. Thank you. My time is expired.

Mr. SHUSTER. Thank you. Members, certainly you can use your 5 minutes in any which-way you want. I would encourage you to ask questions. That is what the hearing is really about, getting information from our witnesses.

And I would just answer I do—it is not—the airlines are not going to own this equipment. It is still going to be owned by a Corporation that is going to be a—it is going to be independent, but the airspace is still owned by the American people, and this equipment has been already paid for by the flying public. Those taxes you pay, that 20 percent of your ticket tax, that is what has paid for this system. It is paid for.

Mr. NADLER. Mr. Chairman—

Mr. SHUSTER. The problem is, to buy this stuff, if you went on the open market, you would probably get 10 cents on the dollar because it is so antiquated.

So again, we are looking for an agency that can go to new technology, not stick with this 1950s—yes, I will yield.

Mr. NADLER. Mr. Chairman, just in response, yes, the flying public, or the public paid through a tax for this equipment, paid about \$53 billion in the last 20 years. I don't know exactly what the fair market value is now. It is somewhat less than that, I presume. But, nonetheless, it is being given to a private Corporation, and that private Corporation should reimburse the public for it.

Mr. SHUSTER. But a nonprofit Corporation run at the benefit—

Mr. NADLER. Nonprofit or otherwise, it is still a private Corporation—

Mr. SHUSTER. Run at the benefit of the American traveling public.

Mr. NADLER. As they see it.

Mr. SHUSTER. That is as it is, not as anybody sees it. It is as it is.

Mr. LoBiondo?

Mr. LOBIONDO. Thank you, Mr. Chairman.

Mr. Rinaldi, could you give us a little color commentary on what the state of technology is in our towers that air traffic controllers are using, and how it matches up with what might be available?

Mr. RINALDI. Well, we are—thank you, sir. We are behind in technology. Canada, the U.K., most of the modern world is using more modern technology than we have in our system. Our controllers are doing a fantastic job with the equipment they have, but the paper flight strips that Mr. Mica held up is a perfect example.

There have been renditions after renditions of the FAA trying to move us to an electronic flight strip program, and we are still, actually, right now testing one. We have one deployed in a Phoenix tower, and we have one in a Newark tower, and we are setting requirements. But that will—through the procurement process, and certainly through requirements, this will be a long, drawn-out process. It will be 2025 when our towers will actually start to see, actually, an electronic flight strip program.

Mr. LOBIONDO. So just in case anybody missed that, what was that year you said when that new technology would appear in our towers?

Mr. RINALDI. We are looking about 2025, and that is if we are funded properly, and that is certainly if the contract is written in a way where human factors are actually on the forefront so it is—you don't have the cost overrun once it gets to the Tech Center in Atlantic City.

Mr. LOBIONDO. So the next question I would like to ask—and we had devoted—and I would like to take the time to thank Mr. Larsen, because a lot of the—all of the 180 stakeholder meetings that we had we did in a very bipartisan manner, and that—we tried to get at a lot of the situations that we were trying to deal with.

And one of the things that we looked at was the air traffic control shortage that we may be facing. And we didn't really get to a conclusion by the—at that stakeholder meeting. Will you give us your take on what we are looking at here, and when we are looking at it, and what the numbers look like?

Mr. RINALDI. They are pretty scary. We are at a 27-year low of fully certified controllers through the system. The number is 10,760, of which those 10,760, 3,355 of them could retire at any moment. That would be—that would cause delays throughout the system, because we just would not be able to open up positions and open up facilities to run the system as we are today.

We do have 3,229 in some type of developmental training status. That status can take any time from 1 to 5 years, depending on the facility they are in, and depending on how they are progressing through the OGATI program.

The agency has made a commitment to hire an appropriate amount this year. I have no faith that they will hit that number, because they haven't in the last 5 years hit their hiring mark.

Mr. LOBIONDO. Mr. Poole, did you—looked like you had something you wanted to add to that.

Mr. POOLE. Actually, I just—I have written about the subject, and even I was shocked today to hear what he said about the date for electronic flight strips. I didn't realize—I knew that there was

work going on, but I didn't realize it was going to be 2025. That is pathetic.

Mr. LOBIONDO. OK.

Mr. RINALDI. Just to clarify that date, they are rolling electronic flight strips into a time-based metering and ground-based metering program, so they are making it more complicated. And if they were just to take a system that is off the shelf today, that some of the manufacturing companies actually have, we could get it a lot sooner. The problem is they are rolling it into some broad initiative of time-based metering.

Mr. LOBIONDO. Mr. Chairman, I have additional questions, but they would run over my time limit. I will wait for the next round. So I yield back at this point.

Mr. SHUSTER. I thank the gentleman. With that, I recognize Ms. Brown.

Ms. Brown? Oh, I am sorry, Ms. Brown. Mr. Larsen is next in line, sorry about that.

Mr. LARSEN. Thank you, Mr. Chairman. Mr. Poole, thanks for being here, helping us out again on this. One day you and I will agree on something.

[Laughter]

Mr. LARSEN. But I wanted to get back to my opening statement and ask your opinion about Coldplay—no, about—

[Laughter]

Mr. LARSEN [continuing]. About defense issues, in particular. You have done quite a bit of work on this issue of privatization and—but I am wondering if you have thought through—beyond a seat at the board, which is what you have recommended.

Mr. POOLE. Right.

Mr. LARSEN. But this is really more than just about a seat at the board, it is about operations and such.

Mr. POOLE. Sure.

Mr. LARSEN. Have you thought through or done any writing on that particular issue?

Mr. POOLE. I have not. I am aware that this subject has come up in every single country that has corporatized their air traffic control. And in some—the solutions vary. Some of them have had civilian controllers take over for the Department of Defense controllers, but with still having interfaces, obviously, on policy and operations with the defense agency. Others have had, basically, co-training to make the two parts work together a little more smoothly.

But, I mean, there is an annual conference on civil-military air traffic control that is sponsored by ATCA, the Air Traffic Control Association, and it was here last November, across the river in Maryland.

Mr. LARSEN. Right.

Mr. POOLE. So this is a subject that everyone in air traffic control knows a whole lot about, and is continually monitoring. It is a subject that every country that is corporatized has had to deal with. But I have not studied it in any—

Mr. LARSEN. Yes, I can't imagine that the other countries that we have discussed today probably have—would have the—to the extent that the MOAs [memorandums of agreement] and the

MOUs exist between FAA and DOD, it is probably a unique pile, probably higher than the pile of paper that Mr. Calio has on his desk.

Mr. POOLE. It is probably so, given the size of our country and the size of our defense budget, yes.

Mr. LARSEN. So then, you couldn't estimate today sort of how long it would take to either unwind those and wind them back up, or to review and replace and—so that those relationships—

Mr. POOLE. Well, my suggestion would be that, as with existing contracts, both internal contracts with employees, and external contracts with suppliers and so forth, all of those would remain in force. You don't just disrupt those at the time of transition. They would remain in force and then, over time, once the Corporation is up and running, they could be reviewed and evaluated and, you know, discussed: Do they still make as much sense as they did when the FAA was running the system?

Mr. LARSEN. Yes. There are some issues, though, with regards to that very question. And you touched on it earlier, you suggested that a more cost-effective air navigation service provider would drive down a unit cost and provide services. And that has been the focus, cost effectiveness. Not as a criticism of the DOD, but a lot of times cost effectiveness isn't the primary goal—

Mr. POOLE. Sure, sure.

Mr. LARSEN [continuing]. Of the—

Mr. POOLE. It is a factor, but it is not the primary purpose, right.

Mr. LARSEN. It is certainly a factor, but not the primary purpose. And so, how—has there been anything—and maybe not your thinking. Has anyone else thought about how the DOD would reconcile its needs vis-a-vis the Corporation, when—if the Corporation is determining cost effectiveness, but the DOD has other—

Mr. POOLE. Well, one example is the primary radars, which—

Mr. LARSEN. Yes, right.

Mr. POOLE. That is, in effect, a joint operation between FAA and the DOD. And the primary radars need to be retained for defense purposes, defense and homeland security purposes, regardless of whether they are still cost effective for air traffic control. So there is a situation which—that relationship will remain in some form.

I agree, details definitely are going to need to be worked out on this, and that is why you have a several-year transition period before the Corporation would be in full operation and full control of a system.

Mr. LARSEN. But then do you—you know, I had all these great questions for you. It is hard to ask them, because if you haven't thought about these over your 30 years of experience, who has thought about these questions over 30 years of—

Mr. POOLE. Well, every other country that has implemented a corporatized air traffic system has thought about and worked out the relationships. And this is just not something that I have—you know, there are a lot of subjects in my portfolio, and this is just not one that I have gotten into in detail. But I know that it has been dealt with and is being dealt with all over the world.

Mr. LARSEN. Well, it just—it seems to me that—this is just the beginning of the questions I have about this issue. And it actually might be better for the Armed Services Committee to explore these



issues from a DOD perspective, as opposed to the Transportation and Infrastructure Committee solely exploring these from a—

Mr. POOLE. Yes, it certainly—

Mr. LARSEN. You would agree with that?

Mr. POOLE. It is their turf also, definitely.

Mr. LARSEN. Thank you. We agree on that.

[Laughter]

Mr. LARSEN. I appreciate it. I yield back.

Mr. SHUSTER. I thank the gentleman. And, again, within this bill there is a provision that those contracts go over, transfer over, stay in place, and to be worked out with DOD and DHS [Department of Homeland Security], those various issues you're talking about. So we have a provision there to deal with it.

With that, Mr. Barletta?

Mr. BARLETTA. Thank you, Mr. Chairman. You know, when I was a little boy, I can remember my father taking me to Connie Mack Stadium in Philadelphia. And to go from Hazleton there you would have to get on to Schuylkill Expressway. Connie Mack—it was a long time, it was back in the 1960s. You know, Schuylkill Expressway is like the same Schuylkill Expressway today that it was back then. Imagine how many more cars are on the road since then. And, you know, I look at passenger rail. It probably hasn't improved much in time, either. We go to the airport, takes longer to go from point A to point B.

You know, transportation is important, it is critical in our lives, in everybody's lives. Time is money in the business community. They are competing in a global economy. But it is also—time is also valuable in the lives of everyday people, whether they are going on vacation, or they are just going to visit a friend or a relative. Delays and cancellations cost money, but it costs people time. And America's transportation system is falling further and further and further behind other countries' in the world.

I commend the chairman, because it is about time we modernize our system, we focus on safety, on efficiency, and lowering the cost to the users of the transportation system.

My question, Mr. Calio, how does a modern air traffic control system allow your members to better serve the flying public?

Mr. CALIO. In many different ways. First of all, it would provide more direct routes, so you get there quicker and faster. You could reduce those block times that we talked about. People would have a better idea, less time spent at the airport. It would be a far more efficient flight, and—which would reduce emissions. It would allow us to fly probably more routes than we have now, and more choice of routes down the line, if you get the system in place.

Right now we are hamstrung by the system we have. Again, well documented both here and by this committee in many different cases. I agree with you, the time to act is now, and I would also say that, you know, we got right out in front of this issue.

And I would like to make one thing clear. We have said before this committee, the Senate Commerce Committee, publicly and privately, in terms of how this system operates, as Congressman Mica was pointing out, we do pay more than our fair share right now. And my members said—and we, again, have said this all over the place—we will continue to do that.

We told Mr. Bolen's people, you know, we don't care about what you pay. And, you know, I would like to correct—Mr. Bolen says they pay 8.5 percent. He is including commercial activity in that. It is not—what his members pay is not quite that. So, long story short, we will pay—we will continue to pay. Paying is worth it, if we get a better system, arming Mr. Rinaldi's controllers and getting more controllers to do the job that should be easier than it is for them.

Mr. BARLETTA. Any time you want to do something big there are issues. But they are not issues that can't be overcome. And I wish, you know, we all sit and realize that. You know, if it was easy, somebody else would have done this already. And it is not easy. But I don't believe we should be throwing the baby out with the bath water. Thank you. Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you.

Mr. Capuano?

Mr. CAPUANO. Thank you, Mr. Chairman. Mr. Chairman, is Representative Young in the room? Because I was actually considering yielding my time to him. But—

[Laughter]

Mr. CAPUANO. Don Young, did he—I was thinking about it, but I guess not.

Mr. Chairman, I guess—here is my problem. I think we have a pretty good system. Can it be improved? Of course it can be improved, anything can be improved. We have the safest system in the world, most complicated system in the world. And most of my complaints about flying is that my knees are too close to my person in front of me, that I am squeezed like this, that I have to pay for overhead, I am about to probably have to pay for the oxygen, but that is—those are other complaints that the FAA doesn't have much to do about.

My complaints don't really go to the system. Can it be better? Of course it can. And I really look forward to the point where we get over this obvious bump in the road and get to the rest of the bill that we pretty much agree on.

But in the meantime, Mr. Poole, do you own an automobile?

Mr. POOLE. Yes, I do.

Mr. CAPUANO. Could I have it?

[Laughter]

Mr. POOLE. No.

Mr. CAPUANO. Why not?

Mr. POOLE. Well, because it is mine, and I paid for it.

Mr. CAPUANO. Ah. But the taxpayers are supposed to give over billions of dollars of property to a private—

Mr. POOLE. Well, those—the general taxpayers did not pay for this. Aviation taxpayers paid for it through aviation excise taxes, so—

Mr. CAPUANO. See, as a Libertarian, I think any time the Government says, "I am reaching in your pocket," call it whatever you want, it is a tax. And when the Government reaches in my pocket as a passenger, and says I have to pay this fee, this fee, this fee, call it what you want, it is a tax when the Government makes me pay that. And I am not opposed to that.

So, therefore, I did pay for it. And yet this bill would have me give it away. I think you should give me your car.

Mr. POOLE. Well, the problem with that—I mean there is a practical problem, in that if you say—put some arbitrary value—let's say—call it \$10 billion. If you put that into the cost base of a system that is going to be supported by fees and charges paid by airlines, that gets incorporated into the cost of operation—

Mr. CAPUANO. I know it is expensive, but why won't you give me your car?

Mr. POOLE. Why would you do that? Why would you make it—

Mr. CAPUANO. Why won't you give me your automobile? All right, I won't take your automobile. How about your suit?

[Laughter]

Mr. CAPUANO. You don't give things away, nobody does. And neither should the Government. So that is one minor little problem.

But I guess—can anybody tell me—my biggest problem with the FAA—and I am no lover of the FAA, I have had problems with them, and the air traffic controllers have been great help to me on my local issue. I have Logan Airport in my district, and I have a very urbanized area. And, like everybody here who lives near an airport, I have problems underneath the flight paths of people complaining about noise. It is not new. It is trying to find a balance.

And the air traffic controllers have been great, educating me on what can and cannot be done reasonably to try to address those issues. And I am trying to get the FAA to be as reasonable as other people have been in trying to attempt to get planes where they need to go, understanding there are real people who live under those flight paths and deserve some consideration.

Who would I call when there is a private company and when I have those complaints and I have those issues? And why would the private company give a hoot about my constituents? They would only be interested, as private companies are and should be, in the bottom line. Who do I call? Who—

Mr. CALIO. The FAA will still have control over routes and procedures. You would call the FAA. You could—also can call the EPA, because NEPA [National Environmental Policy Act] stays in place.

Mr. CAPUANO. Well, EPA hasn't been helpful at all. And, by the way, the FAA—this is the part of the FAA that I think is broken. I would really rather work on this part of it, to get to fix that, than the parts that we are doing with this bill.

I don't see how a private entity could possibly care—or should care, again, that is not their role—in the interests of the general public who live underneath these flight paths. And my big concern with NextGen? It used to be funding it and whether it is worth it or not.

Now it is OK, we have got it, and it is kind of hindered and harmed, the quality of life of the people under those more narrow flight paths. And up until this point, no one seems to care except the elected officials. And I don't think this is going to improve that, or get anybody else to care about that. I don't see how this could work.

And again, I look forward to getting past this issue and back on track to get another FAA reauthorization bill done that we can all

agree on. And I think it is here, in the substance. Just move it a few inches aside. Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. With that, Mr. Graves.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. I will reserve the balance of my time.

Mr. SHUSTER. Mr. Ribble?

Mr. RIBBLE. Thank you, Mr. Chairman. I think, first of all, we need to kind of put—or set aside some myths that have been going on. I have heard it both on the other side, I have heard it from some of our panelists related to—that the problems with the FAA are in part centered around Government shutdowns and inconsistent funding.

In the last four decades there has only been 50 days of Government shutdowns. Over 14,600 days, there has been 50 days of Government shutdowns. And some of those the FAA was exempt from. So that is a tiny, tiny number, about 1 day or 10 days per decade. The Republic will survive.

Secondly, on funding, we talked about inconsistent funding. I am not going to give you budget numbers, I am going to give you appropriated numbers. In fiscal year 2013 they were funded at \$15,238,000,000. In fiscal year 2014, \$15,734,000,000. In fiscal year 2015, \$15,847,000,000. And in fiscal year 2016, \$16,011,000,000. So each year the funding has been relatively consistent, and has been growing modestly every single year. And so, our problems with the FAA are not because they have had inconsistent funding, or irregular funding, or Government shutdown. It has been more of what the inspector generals and Government Accountability Office has talked to us about.

Now, related to this fix, whether the fix is the right fix or not the right fix, I think that is all up for debate. And I think that we can try to figure out how in the world we can move forward and actually get a fix that actually works for everybody.

First of all, Mr. Rinaldi, air traffic control workers have done, really, quite an extraordinary job.

Mr. RINALDI. Yes, they have.

Mr. RIBBLE. I mean, I—

Mr. RINALDI. They are outstanding.

Mr. RIBBLE. You need to know that when I get on an airplane—and I get on an airplane every single weekend to fly back to Wisconsin and then back to Washington, DC—safety never enters my mind. And so I want to commend the air traffic controllers for how good they actually are.

Mr. RINALDI. Thank you, sir. I appreciate that.

Mr. RIBBLE. You are welcome. And I think they will continue to be good, even if we have a different structure. And just because Government is out of the way and a not-for-profit organization is running it doesn't necessarily mean safety or things go bad.

In fact, if Government shutdowns are, in fact, a problem, maybe we just get the Government out of the way and then there would be no shutdowns. But I just wanted to make it clear that your team and the workers that do this every single day have been doing a terrific job. And I want you to know that.

Mr. Bolen, you mentioned numerous times in your testimony both written and spoken today that one of your concerns is turning

over this new, not-for-profit organization to the big airlines, because they will have, in essence, 50 percent of the board for representatives, and then someone from the airline——

Mr. BOLEN. Well, they will have effective control.

Mr. RIBBLE. Yes, effective control. But yet I thought I heard you say when you were asked a question, “Would you restructure the board then,” you said no. Did I misunderstand you?

Mr. BOLEN. Well, I think the scope of power that is granted to the board should not include things like taxing authority. It should not include things like the ability to determine who can fly where and when. So there are some fundamental issues that go beyond just the structure of the board and the number of seats.

Mr. RIBBLE. OK.

Mr. BOLEN. So, you know, I think that is kind of a fundamental question, is should a board reflect the public’s interest, and will it. And certainly currently, as it is structured, I don’t believe that is what this bill does.

I think trying to fix it raises some questions about what is the scope of the authority that we have turned over. Taxing authority, as was said by the first Chief Justice of the Supreme Court, the ability to tax is the ability to destroy. And whether you call it a rate or a charge or a fee or anything else, that is what we are talking about doing by giving this board the ability to set rates and charges.

Mr. RIBBLE. Mr. Bolen, wouldn’t that basically—wouldn’t moral hazard come into play then, and consumers would respond to it?

Mr. POOLE. Well, let me answer that. I object strenuously to characterizing this as giving taxing authority. A tax is something only Government can do, and I agree with Mr. Bolen on that point. But let me give you the example.

The Government owns a utility called the Tennessee Valley Authority. It sends electric bills every month to its customers for the services that they purchase. Similarly, an air traffic—a federally chartered nonprofit air traffic Corporation would send bills to its customers for the services that they deliver to it. That is a charge, just like an electric utility bill. It is not a tax in any way, shape, or form, legally or in any commonsense interpretation.

So, I think this is really distorting the reality of what is proposed here. It is proposing to create a nonprofit utility, not a taxing agency.

Mr. RIBBLE. All right, thank you very much. Mr. Chairman, I am out of time, I yield.

Mr. SHUSTER. Thank you, Mr. Ribble. Where am I? Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. There are a lot of good provisions in this bill regarding safety, technology, and addressing the concerns of the local communities over the Metroplex flight routing plans. But, unfortunately, the bill also includes several poison pills that I cannot support, and find very objectionable.

One of them—and I strongly oppose the inclusion of section 611, which overturns a Federal court decision that protects meal and rest breaks for truckers, truck drivers, as required by California law. And it is a law in 21 States. On July 4, 2014, the Ninth U.S. Circuit Court of Appeals ruled that trucking operations in Cali-

ifornia must allow for 30-minute meal breaks after 5 hours of work, and a 10-minute rest break after 4 hours of work, a very reasonable standard when you consider that truck drivers can be subject to 14 hours of on-duty time.

Section 611 would not only preempt California's law with regard to trucking operations, but would also preempt laws in these other 21 States and territories that currently guarantee a meal break. States are Colorado, Connecticut, Delaware, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, Tennessee, Vermont, Washington, West Virginia, Guam, and Puerto Rico.

States should be allowed to set their own meal and break standards as they see fit for the health and safety of their workers and of the general public. This section has no place in this aviation bill, as it is a provision that was addressed in the motor carrier labor standards, which we already debated in the FAST Act, the transportation bill currently just passed. And the conference committee wisely agreed that we should not interfere with State laws. This provision was not included in the final FAST Act.

And, Mr. Chairman, I will be offering an amendment with my colleagues, Ranking Member Norton and Mr. Nadler, to strike this section from the bill. I urge my colleagues to support it.

Secondly, I have strong concerns and do oppose the proposals included in this bill that privatizes our air traffic control system. I have visited several of my small areas and talked to the traffic control persons, and they may have challenges, but it is still the safest and most efficient in the world, when you consider how many flights per day operate in our country.

One of the greatest challenges facing our air traffic control and aviation system is a lack of investment by Congress, by this Government, in new technology, safety, and our airports. We should be using this bill to address our investment challenges and give our airports the tools to increase investment and raise the cap of passenger facility charges if local agencies want to raise the revenue for airport improvement.

Mr. Chairman, I want to show this chart that was prepared, the comparison of air navigation service providers.

[Chart]

Mrs. NAPOLITANO. And, as you can see, the United States is way ahead, and 15,539,009. This is in movements—compared to the United Kingdom and Canada, which are not even half. And the smaller number of airplanes is 209,034, where—this is the number of general aviation aircraft, and you should have it somewhere up there, too—whereas the closest one is the United Kingdom at 1,480. This is just not a comparison.

And then, when we have the big giveaway, value of assets for Canada is \$3 billion, of the United Kingdom is \$1.3 billion, and in the U.S. is \$53 billion. Not quite the comparison that I would say is adequate.

I have concern the new air traffic controller system would address recruitment, retention, and training of a diverse air traffic control workforce. It is a giveaway, and I think one of the issues I have is the flight paths that I have taken up with FAA.

And, Mr. Rinaldi, under this privatization proposal what requirements and standards will apply with respect to the organization's recruitment and retention of a diverse workforce? And how will the proposal work in maintaining standards for training air traffic controllers, and making sure they are prepared and fit to protect our Nation's skies? And who will be in charge of and make those decisions?

Mr. RINALDI. Thank you, Congresswoman, great question. I believe, by bringing all of the negotiated agreements and work agreements over intact, and having a robust transition period to work all these issues, to make sure we have no unintended consequences on the safety and efficiency of the system, and to ensure that we continue to hire diverse—in a diverse pool, and make sure that we are training properly and using modern technology for training tools—right now our training system is pretty antiquated. And using modern technologies for training, we can, you know, hopefully streamline the training and speed it up to the point that we can actually see a controller be fully certified in less than 5 years.

Mrs. NAPOLITANO. Thank you. Well, there is a lot of other questions I would have, Mr. Chair, but I really thank you for bringing this forth. I yield back.

Mr. SHUSTER. I thank the gentlelady. With that, Mr. Massie is recognized.

Mr. MASSIE. Thank you, Mr. Chair. And, Mr. Rinaldi, I just want to reiterate something my colleague said earlier, that air traffic controllers, particularly in my district, do a wonderful job, and we feel very safe with your men at the helm, and women.

I want to ask you the first question, though. I was able to go into an air traffic control tower at CVG [Cincinnati/Northern Kentucky International Airport]. And the first thing that struck me, besides the professionalism of your crew, is the antiquated technology. I mean it looked like a computer room from the 1980s, and that is being kind. Could you share with us what sort of tools that you would like to have that the FAA has not incorporated into the air traffic control regime, and what the benefits of those are?

Mr. RINALDI. Sure, I—you know, I think one of the first things that we talked about were our electronic flight strips. I think when you went into the facility, you probably saw them walking around with pieces of paper, and that a controller that was working one position would walk a piece of paper to another controller, and then they would walk it around as the airplane was moving throughout the airport movement area. And then, eventually, once the airplane took off, then it would be either some type of manual way to get the information to the radar controller. That would be—to us, that is the technology. It is hard to even say that is modern technology.

In the Nav Canada world, they have been working on this, working with this for 20-plus years. They are selling it around the world. I mean if you ask how would we enhance the tower environment, that would be something, certainly, we would do.

Our radar environments in our large centers and our TRACONS, how we would enhance that is to give us, you know, more tools and modern technology, better voice switch systems. And, most importantly, better staffing. We are crucially, crucially—at this point with our staffing our controllers are having tough times to get

breaks, take time off, to make sure they have appropriate amount of, you know, fatigue mitigation going on. Our staffing, we must address the staffing of our facilities, and that is a deep concern of ours, as we move forward.

Mr. MASSIE. Thank you.

Mr. Poole, I don't think there has been enough time dedicated in this hearing to the sorts of technological advancements that we have missed out on in this country, in air traffic control, and what the advantages of those would be, and that we have seen in other countries. Could you talk to that?

Mr. POOLE. Well, one of the most important is data link, controller-pilot data link, which substitutes electronic digital information about changes in altitude and things like that for voice transmissions. Voice transmissions are subject to errors, mishearing, static on the line, and so forth. It is a safety problem in some respects. It is also—it slows things down if they have to repeat the communication because of interference, and so forth. So that is another big one that is already operational, nationwide, in Canada, and has been for a couple of years.

Nationwide, data link in this country is probably the early 2000s, at best—2019 is the starting point, as I believe. Is that right, Paul?

Mr. RINALDI. That is about correct.

Mr. POOLE. So typically, it takes years to roll this out to all the facilities. So that is another—that is a good example.

The chairman mentioned earlier—I am not sure if you were here then. Nav Canada is the lead investor with Iridium Corporation in developing global satellite-based ADS-B, which provides radar-like separation in oceanic and polar airspace, where currently, for the most part, you have huge boundaries around how far apart—how close flight tracks can be, and the altitude separation, and so forth, because of the inaccuracy of knowing exactly where the planes are in real time.

With ADS-B over the oceans, thanks to satellites, it is just as if they were over land, and you can space flight tracks close together, people can get the optimum altitudes for minimum fuel burn, and things like that.

Mr. MASSIE. And would—

Mr. POOLE. Huge benefit.

Mr. MASSIE. Would those advantages be available to general aviation, as well?

Mr. POOLE. That will be available to anybody who equips their plane to have ADS-B, which is required by 2020 in this country. So, yes, it would be available to all GA, as well.

Mr. MASSIE. So, what leads you to believe that we are going to see these advancements if we pass this bill?

Mr. POOLE. Well, I mean, the difference is you are going to have an organization dedicated to providing the aviation customers with the best cost-effective technology as soon as possible. And it will have its own private-sector kind of procurement system, not Government procurement methodology, not the kind of long, cumbersome process that leads—by the time a new system gets implemented into the field after these long, long procurement periods under the current regime, a lot of the technology is already obsolete.



You need to have a system developed where you have continuous incremental improvements to take advantage of rapidly changing technology in all of these areas. And the FAA is incapable, it appears, to have that kind of a system because of their long, cumbersome, bureaucratic processes.

Mr. MASSIE. Well, I like your model, that they need to think of themselves more as a customer service utility—

Mr. POOLE. Yes.

Mr. MASSIE [continuing]. Instead of just a safety organization whose only customer is Congress.

But, Mr. Chairman, my time has expired, and I yield back.

Mr. SHUSTER. I thank the gentleman. And I don't know if I heard you—you talked about the deployment of the Canadian—that their—that organization. They are going to have 100 percent of coverage of worldwide airspace by the end of 2017.

Mr. MASSIE. So we may be renting their system.

Mr. SHUSTER. Very much. Today 30 percent of the world is covered. With the deployment of their technology, they will have 100 percent coverage. They have already had—I believe the number is 15 other countries have already signed up, they are going to subscribe to use their airspace, and it is going to be more efficient than our space. So that is something that, you know, we need to look at. So, thank you.

With that, Mr. Lipinski is recognized.

Mr. LIPINSKI. Thank you, Mr. Chairman. I want to start by thanking you for the exemplary way that you put together—leaving aside the ATC part—putting together the rest of this bill. It doesn't mean I won't have any amendments tomorrow, but it will be far fewer than the 19 I had on the FAST Act.

First thing, a question of who should the FAA serve, because that seems to be something that is floating around. I am—I was very happy to hear the chairman say that it is the flying public they should serve. It seemed that Mr. Poole might have been suggesting that that is not, because he said the FAA shouldn't have safety as the number-one priority. I think it needs to be the number-one priority, because that is—they are serving the public, and that is their number-one priority.

We need to have airlines that are successful in this country, in order that we have a successful aviation industry, it could move people around. But it is important, I think, that the flying public is the—is who is served by the FAA, served by ATC.

And Mr. Calio seems to suggest that, well, the A4A should have a super-majority, so they are really giving something up by only having four seats on the board. But that is assuming that the A4A is who ATC—who their customer—who the primary entity they should serve. And A4A is simply an organization that represents not all of the airlines—although maybe the three I fly are all in the A4A, maybe that would be good for people flying in and out of Chicago. But let's keep our eye on we should be serving the flying public. That is what the air traffic control should be doing.

Now, noise issues. We have gone over this. I just want to make—be clear on this, because we had a discussion on it, but the bottom line—we have heard people can go to the FAA, because they are still the regulator, if there are noise issues.

Does the FAA have any authority to require this private Corporation to change their routes, or to change anything that would lower any—or eliminate noise problems, or try to—does the FAA—will they have the—OK, people can go to the regulator. Do they have any authority here, with the Corporation? That is a big thing that has been missing. We have been told you can go to the regulator. But can they do anything? Does anyone have any—

Mr. RINALDI. Well, I think if you—and I am going to answer in simplistic terms, because I don't know the exact answer to your question. But if we bring everything over as is, the approaches, the flight paths, and as is into this not-for-profit Corporation and don't make any changes, then the noise complaints that you are getting today are as you were getting them then.

If there are any changes that we were going to do to modernize the system, that would have to go through the regulatory safety and certification function of the FAA for approval.

Mr. BOLEN. Mr. Lipinski?

Mr. LIPINSKI. So you—yes?

Mr. BOLEN. At least in Canada they don't have that. And, as I understand from this bill, airspace redesign is not subject to that review.

Mr. LIPINSKI. All right, thank you. I have to move on, just because of time.

Mr. CALIO. Excuse me. That is just not true. First of all, you could go—a consumer or someone aggrieved about noise could go to the FAA and through—to the Environmental Protection Agency. The NEPA protections stay in place, they don't disappear. That is what currently exists under the system.

Mr. LIPINSKI. I am not sure that would cover all of it, but we can have a further discussion on that.

Now, the legislation allows an air traffic service user to file a complaint with the Secretary that a fee increase is unreasonable. An "air traffic service user," does this include an airline customer? Are they included in that, in this bill? Is that how air traffic service user is defined, or is it just the airlines?

Mr. POOLE. My understanding is it is those who pay the bills. And those who pay the bills would be airlines and anybody else that is a commercial operator, not—

Mr. LIPINSKI. So the flying public should—and I think—before I move on to the next question, I think we are getting this—this idea keeps getting thrown out that the airlines are paying the bills. But who pays—who really pays them? They have to be passed on to the flying public. They are not just eaten by the airline. It goes in. So—and I certainly think that the public should have more of an input here.

Now, the last question is about insurance coverage. The bill says that the new entity must maintain adequate insurance coverage. Nav Canada currently maintains a roughly \$5 billion policy, according to the 2015 annual report. How much coverage do you expect that a new entity in the U.S. would have to have?

And I also notice that Canada maintains an indemnification program at no cost to Nav Canada to protect it from terrorist-related loss that may be in excess of the insurance coverage. So how much do you think that this Corporation is going to have to have in the

insurance company? And then, will the Government still have to have an indemnification program?

[No response.]

Mr. LIPINSKI. Is anyone—

Mr. RINALDI. From what I understand—and I am not an expert in the insurance business at all—I do know that the Nav Canada system is set up for the unthinkable to happen, and litigation coming down. The fact that we run about 10 percent—they run about 10 percent of the traffic that we do, you would think that might be about, you know, 8 to 10 times more than that. Not an expert in insurance by any stretch of the imagination.

Mr. LIPINSKI. All right. I ran through this very, very quickly, just because of lack of time. A lot of questions. I thank you for your answers. We need—I think we should be doing something, looking at how we can make changes to make things move more quickly forward, especially NextGen, but I still have questions about the proposal that we have before us.

With that, I will yield back.

Mr. SHUSTER. Mr. Graves?

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. This bill has been an interesting endeavor, and all the meetings that we have had over the last several weeks, trying to understand this bill. It is very disappointing to see the loss of the bromance between our chairman and ranking member, and I hope that you all are able to rekindle the flame.

Mr. Poole, what kind of car do you drive?

[Laughter]

Mr. POOLE. I drive an Infiniti G37.

Mr. GRAVES OF LOUISIANA. Whoa. I was trying to decide if I was going to ask you for your car, as well, and that is definitely an upgrade from mine. That informs my decision.

No, but seriously, going back to the gentleman from Massachusetts' line of questioning earlier, he asked about if you would give him your car. But in reality, under this legislation, the car—there is not an ask of Congress to effectively just hand over your car without any type of—

Mr. POOLE. No.

Mr. GRAVES OF LOUISIANA [continuing]. I guess, continued service. And this—perhaps a comparison would be something more along the lines of you are giving access to your car to someone else, but they are continuing to provide you with car service, effectively. And the idea is that they will do a better job maintaining your vehicle than you are doing. Is that—

Mr. POOLE. That is a reasonable analogy, certainly, yes.

Mr. GRAVES OF LOUISIANA. OK, great, thank you. Look, I got to be honest. The whole paper strip idea is very, very concerning. It really is. I mean what happens if I drop one in between the desks? What happens there?

Mr. Rinaldi, I certainly appreciate your comments and commend you and your organization for the great and safe air service we have, but it is important for us to recognize we can't rest on our laurels, that we need to continue to innovate, we need to continue to make sure that we improve upon safety, we improve upon our records.

And I do have strong concerns about the current service that we have, in terms of the billions of dollars that have been spent upgrading to—attempting to upgrade to NextGen without actually seeing the results. I think the ranking member used to refer to it as NeverGen at one point, and there are fundamental concerns there.

Mr. Poole, would you be willing to give Government control over your personal finances, yes or no?

Mr. POOLE. No, I certainly would not.

Mr. GRAVES OF LOUISIANA. All right, thank you. I mean the point is I have been here about a year, and I am not sure that I have seen many things that the Federal Government actually does really well. And there are models out there where you see significant improvements.

Mr. Poole, some of the meetings I have had, general aviation has raised concerns about shifting costs over to the general aviation community. But under the bill it seems that, unless they cross over into a profit or commercial-type activity, they are largely held harmless. Is that accurate?

Mr. POOLE. That is correct. I mean the distinction that is drawn in the bill is between commercial and noncommercial. And commercial has historically been defined in U.S. aviation law and practice as selling services to passengers.

Mr. GRAVES OF LOUISIANA. OK.

Mr. POOLE. So Exxon Mobil's Gulfstream is defined as non-commercial because they are not selling the service to anybody, they are simply using it themselves.

Mr. GRAVES OF LOUISIANA. OK.

Mr. POOLE. And, in my view, Exxon Mobil should pay a user fee if they are going to fly their Gulfstream in U.S. airspace, but that is not the way the bill is written, so—

Mr. GRAVES OF LOUISIANA. I know the—I am not real sure who to direct this to, but Louisiana, where I am from, we are susceptible to hurricanes and disasters, and things along those lines. Can someone help me understand? If we have a situation like we have had in the past, where a hurricane comes through and you destroy a tower, who in that case would be responsible for the rebuilding and restoration of that facility?

Mr. POOLE. Well, it certainly would be the Corporation. That would be part of its capital budget.

Mr. GRAVES OF LOUISIANA. So there would be no expectation that taxpayers would come in and—

Mr. POOLE. No, not at all, no.

Mr. GRAVES OF LOUISIANA [continuing]. Kick in to cover that?

Mr. POOLE. That is part of the point.

Mr. GRAVES OF LOUISIANA. OK. Mr. Calio, could you address oversight issues? And I will tell you it is a strong concern of mine that Congress continue to have a role in oversight, considering that this is a Federal asset. And, obviously, strong public interest there. Can you share a perspective on how you expect this committee and others to conduct our oversight responsibilities under this legislation?

Mr. CALIO. Sure. Chairmen Shuster and LoBiondo's proposal would focus the oversight of the Congress and the FAA on the—

on safety, which is where it belongs. That is what we do best, is what the Government does best, is regulate safety. That would put oversight of the flying public and the airspace in the same position as all the other modes of transportation that are underneath this committee.

If you look at the NTSB [National Transportation Safety Board] as an example, the Federal Railroad Administration, this committee has oversight there, as do other committees, but not over the operator of the system. You know, and that, again, is international best practice. Over 60 countries, developed countries, have that kind of system in place where you separate the air traffic operation from the safety regulator. And it is done because there is considered to be an inherent conflict of interest in keeping the two in the same place.

Mr. GRAVES OF LOUISIANA. Could this—I am sorry, last question—could this Corporation sell the assets if they are—under this legislation, could they sell the assets and profit from that? Anyone have a—Mr. Poole?

Mr. POOLE. The answer—it is clearly spelled out in the legislation that they can dispose of assets considered to be surplus to the business purpose of air traffic control. But they are required to—I mean, since it is a nonprofit Corporation, the proceeds from those assets would go toward new capital expenditures, modernization, facility consolidation, and this sort of thing. It is not like they would be putting it in their pockets and walking away with it.

Mr. GRAVES OF LOUISIANA. Thank you. Thank you, Mr. Chairman.

Mr. CALIO. Can I make one point about these assets we keep talking about? They are mostly antiquated or don't work, and they have significant liabilities attached to them. So this is not a zero-sum game.

Mr. LOBIONDO [presiding]. Mr. Sires?

Mr. SIRES. Thank you, Mr. Chairman. First I want to commend the chairman and the ranking member for all the hard work, and the committees that worked on this. You know, there are a lot of good things on this bill, but there are some things I just can't live with.

First, I represent part of Newark Airport. For my constituents, noise is a big issue. And I would like to follow up on what my colleague, Mr. Lipinski—in terms of flight patterns. I mean we not only have problems with airplanes, I got problems with helicopters in my district. And I have been fighting the flight patterns of these helicopters for over 2 years.

So, I was just wondering. Who do I turn to when I have all these issues? And why does it take so long if you have such an issue? Is it going to take longer now, if you privatize this? Because, as it is now with the FAA, it takes a long time to get things changed. So I was just wondering if anybody can answer me.

Mr.——

Mr. CALIO. Mr. Sires, as I said earlier, the avenue would still be to go to the FAA first, and to the Environmental Protection Agency, because the NEPA provisions stay in place.

Additionally, I would point out that, you know, there are noise problems across the country, and we, the airlines, are very sen-

sitive to those. And we will try to work closely with the FAA, and sometimes we actually take the lead in trying to resolve these problems, because it is not in our interest to have a lot of unhappy people.

Mr. SIRE. But on this board that makes all these decisions that you are going to have with this privatization, there are no consumers on that board, right? Are there any consumers on the board? Does anybody know?

Mr. POOLE. It is not called out that way in the legislation, but there are two public interest representatives to be appointed by the Secretary of Transportation. So those, I would presume, would be intended to represent—

Mr. SIRE. How did we come up with four members of the airlines, anybody know?

Mr. POOLE. Have to ask the—

Mr. SIRE. I mean it seems like an awful lot.

Mr. CALIO. Well, to many people, two general aviation seems like an awful lot, given the use of the airspace, and who pays what for the airspace, and the number of people flying. We do 27,000 flights and 2 million people a day, and 50,000 tons of cargo a day. And, you know, frankly, we thought we should have more seats.

And I do not agree with Mr. Bolen's notion that there is going to be some kind of conspiracy between the pilots, the air traffic controllers, and the airlines. I mean if we want to talk about that, maybe we should move this debate down to Dealey Plaza and talk about that way in the future. You know, it—

Mr. SIRE. But, I mean—

Mr. CALIO. Four seats is less than representational of the use of the airspace and the contribution to the—

Mr. SIRE. Would you say you move 2 million people a year? Is that what you said to me?

Mr. CALIO. No, a day.

Mr. SIRE. A day?

Mr. CALIO. Day.

Mr. SIRE. And don't you think they should have a couple of seats in there?

Mr. CALIO. There are seats for the public interest. And I would also say this is the beginning of a process, and it is a time to talk about—

Mr. SIRE. You are not going to give up seats in the future. That is not—you know, whatever the progress takes us—you know, whatever the process takes us, I don't think anybody is going to give up seats.

Mr. CALIO. I think we represent the most people who fly.

Mr. SIRE. Mr. Rinaldi, are you comfortable that when you are negotiating you are prepared to negotiate with a corporate structure, rather than the current structure that you have now to negotiate?

Mr. RINALDI. One of the things—thank you, sir. One of the things we wanted to make sure that was captured in law was a fair negotiating process with mediation and binding arbitration. And, as it stands now, that does carry over. That is something we will watch closely. Because if that is not a part of the bill, then we would have a big problem with it.

Mr. SIRES. And are you comfortable? You said now you have a 27-year low in the number of—

Mr. RINALDI. Air traffic controllers—

Mr. SIRES. Air traffic controllers.

Mr. RINALDI [continuing]. Fully certified—

Mr. SIRES. Are you comfortable that, with this new structure, you are going to be able to build that number?

Mr. RINALDI. Well, listen. I am not comfortable with the—

Mr. SIRES. Because—

Mr. RINALDI [continuing]. FAA, that they could actually get us our numbers back up to speed. And so, what we are trying to do is make sure we have stable, predictable funding, to make sure that we still continue to hire controllers. And we—quite possibly in this process we can break down the lines of business and the stovepipes within the FAA that really don't want the end result, don't focus on the end result, they just focus on their task.

So HR [human resources] in the FAA are concerned about processing applications, they are not concerned about the other road to make sure that we are getting fully certified air traffic controllers down into our facilities.

Mr. SIRES. And I would just—I don't have time to ask questions, but I would like to make an observation. Everybody keeps throwing Canada into our faces, whether it is health care or whether it is this bill. I mean Canada—what, 40 million people? It is a lot easier to set up a system for 40 million people, especially a health system for 40 million people than for 300 million people. So, you know, we have a lot more flights and a lot more complicated systems here than Canada does. And this is the safest.

And I must compliment the air controllers. I mean I have been to the tower in Newark. I think I would have a headache right after an hour working in that place, you know, these little things going on the board there. And as far as the airlines, you do a great job. But I wish you will think of people being taller than 5 foot 2 inches. I mean I have no room in my legs for any of—you know? That is not a knock on you.

Mr. CALIO. Are you saying—

Mr. SIRES. No, that is not a knock on you, I am just 6 foot 4 inches.

[Laughter]

Mr. SIRES. Thank you very much.

Mr. CALIO. I am a little sensitive.

Mr. SIRES. Thank you for your time, sir.

Mr. LOBIONDO. Mr. Rokita?

Mr. ROKITA. I thank the chairman. Nick, how tall are you?

Mr. CALIO. Privileged information.

[Laughter]

Mr. CALIO. Not as tall—I found out recently not as tall as I used to be.

Mr. ROKITA. I have heard stories about that. I want to thank the chairmen for their leadership—and I use that term specifically, because that is exactly what this exercise is, it is one in leadership. And we are trying to solve a problem here. And as a user of the airspace myself, I just really take my hats off to the work done by committee, and the language put out here so far. I will certainly

have some amendments for tomorrow. And in informing that debate, I have some questions right now.

Mr. POOLE, I am a subscriber to Reason Magazine, and consider myself a “small l” libertarian, if nothing else. The analogy you made to TVA, the Tennessee Valley Authority, has piqued my interest. When these folks set the rates, is there a board of customers that informs that decision?

Mr. POOLE. That is a very good question——

Mr. ROKITA. Right.

Mr. POOLE. I don’t know the answer to that.

Mr. ROKITA. So let’s assume that there is. Do you think it is appropriate that that board consist of consumers of the electricity, particularly business consumers of electricity that would have competing interests against each other, arranged in such a way that one segment of the competing—the competitors in the industry could put their thumb on the scale and adversely affect their competitors in the same industry?

Mr. POOLE. No, I think the key factor in creating a stakeholder board is to try to balance the stakeholders, so that you don’t have any one stakeholder group that can really dominate the process.

My judgment is that the draft—what is in the bill now looks like a good attempt. It is maybe not perfect. Maybe it can be fine-tuned. But you have different categories of customers who are getting services—you know, general and business aviation and airlines. You have the people who are making the system work——

Mr. ROKITA. But certainly if you have a situation where competitors sitting on the board or not, or just—or someone in the industry who uses—like Mr. Calio mentions—most of it——

Mr. POOLE. Right.

Mr. ROKITA [continuing]. Can—could take a competitive advantage, or otherwise ignore another segment of the industry, that would be problematic, from a board governance perspective.

Mr. POOLE. It would. But let me make a point, though, that the people who are going to be on the board nominated by airlines are not going to be airline employees, they are not going to be A4A employees. They are going to be distinguished citizens that they have confidence in——

Mr. ROKITA. Yes, representing that industry. That is the thing. And if I am representing an industry, whether I am directly associated with it or not, you know, I have a fiduciary duty to shareholders to maximize profit.

Mr. POOLE. Well, no. But the legislation, as drafted, says their fiduciary duty is to the air traffic—ATC Corporation, which is the same principle that has worked for 20 years in Canada. And that is legally enforceable, that is a—you know, the fiduciary duty is to the air traffic Corporation, not to the entities that they are nominated by.

Mr. ROKITA. Well, I will have to look at that, because that——

Mr. POOLE. Yes——

Mr. ROKITA. It wasn’t clear to me——

Mr. POOLE. That is a very important——

Mr. ROKITA [continuing]. In a couple readings of the legislation.

Mr. POOLE. Yes.



Mr. ROKITA. Maybe that needs to be strengthened. Regarding air-space redesign, let me run a scenario by you so that I understand this. And this will probably go to Ed and Nick.

If I am chartering a plane into Teterboro, and that is a part 135 operation that is for commercial revenue. I don't own the plane, so it is not part 91. In fact, as much as I love my chairman, I would differentiate: just because you are generating revenue doesn't necessarily mean you are making profit. And that is certainly the part 135 industry in most regards.

Mr. CALIO. The airlines know that.

Mr. ROKITA. Yes, right. So you know, I want to get us off this commercial versus noncommercial, because that is not distinctive, actually.

But let's say we are on the board, and we have the airlines represented, we have some general aviation represented. And all of a sudden we notice that these customers flying the part 135s, for example, into Teterboro with their sales team to make a pitch in New York City could just as easily—or not just as easily, but for that kind of money—buy a round of first-class tickets on a given airline.

And me, representing the airlines, would prefer that. That is what we are in the business to do, sell especially first-class seats. So what prevents me, the way this language is written, from making a motion on the board and having me and my allies—because I agree with that, Mr. Bolen, and you are not going to change me, because I used to be in board governance, and I know that 30 percent is effective control—what prevents me from making a motion, having it seconded, having it voted favorably to say, “You know what, we don't need that many planes going into Teterboro, look at that line. Forget about fees and charges, but that line going into Teterboro is too long, that is hampering me from getting my passengers into JFK or LaGuardia. Therefore, we are going to limit the number of flights to Teterboro to X,” and it passes.

And now I have effectively sold more airline seats to go to JFK or LaGuardia, and—

Mr. BOLEN. Well, I think you are hinting at exactly some of the concerns that we have raised.

I would like to go back and address a couple of other concerns—

Mr. ROKITA. I am over time, and I got to be respectful, so I am going to limit you to 15 seconds, and then I want Nick to respond, if that is OK.

Mr. BOLEN. I think you are raising a very serious, very legitimate concern, and it gets to the heart of our concern about setting up this board.

I also want to point out that there are other concerns about some of the things that have been said related to taxes and fees that I think need to be corrected.

Mr. ROKITA. OK. I look forward to hearing more offline in advance of tomorrow.

Nick?

Mr. CALIO. The way it works today, there are a limited number of slots for GA going into Teterboro. That is why they get diverted elsewhere. I don't believe that would change.

And, you know, Mr. Rokita, I have to say this notion of this board going outside of its authority—the legislation is very clear. GA is exempt, except for those who are already part 135—

Mr. BOLEN. That is not true.

Mr. ROKITA. You know, that is the thing—let me stop. I don't want to start a fight. But, Chairman, I would like to know the page number and line that—

Mr. LOBIONDO. Well, we will have round 2.

Mr. ROKITA. Oh, OK.

Mr. LOBIONDO. We have—trying to, you know—we are trying to accommodate. Everybody has been patient—

Mr. ROKITA. That is a very important point, and I don't see it in—

Mr. LOBIONDO. You will have round 2, Mr.—sorry, thank you.

Ms. Brown?

Ms. BROWN. Thank you, Mr. Chairman. And you know, I am going to be real brief, because I want to give—safety is the number-one thing that I am concerned with. And the last time the Government went to a private agency for their assistance was in—with Amtrak. And then we nickel and dime Amtrak to death. I know no one remembers that.

And in 1988 President Reagan partially privatized the air traffic controllers, and we are still recovering.

I have been supportive of the air traffic controllers the entire time I have been in Congress. But I am concerned with what is being proposed here today, because we have a system—yes, when we passed it in 1995, it was very slow getting started. But they are moving forward. The idea that we would compromise safety in any way—and someone up there made the statement that they are concerned about the traveling public, that is our responsibility, to make sure that we have the safest system, the safest system. That is my responsibility.

I travel twice a week, and I can tell you I have seen several specials on the near misses. And if it is a near miss, then we need to make sure that we give the system the money or the assistance they need to get it done. But to go completely—turn it over to a nonprofit, I just can't fathom that.

And let me just tell you what people ask me about is that when US Airways and American Airlines merged, we don't have curbside service, or that you have to pay \$1,000 for a one-way ticket to Jacksonville. I mean that is the kind of issues that the public concerns itself with. They don't have to worry about safety.

And I want to start with Mr. Bolen. Can you tell us about safety? Because that is our number-one responsibility.

Mr. BOLEN. Well, I think I can tell you that today the U.S. has the safest air transportation system in the world. And we are currently experiencing the safest period in our aviation's history.

What—one of the reasons that safety is improving—and it is laid forth in a MITRE report—is that we have been adopting additional safety standards. I think what the report found is, regardless of governance structure, regardless of the type of organization, safety has been improving. But nowhere in the world is it safer than it is here, in the United States.

Ms. BROWN. Do you think, in privatizing the system, we would compromise that safety?

Mr. BOLEN. I don't know whether safety will be compromised. I don't see any empirical data on safety. My concerns are primarily with access to airports and airspace. I think consumers will get hurt, I think small towns and rural communities will get hurt. I think general aviation operations will get hurt.

Ms. BROWN. Mr. Poole? Safety?

Mr. POOLE. I think the empirical record shows that safety has improved in most countries that have done this. The rate of losses of separation, you know, the standards of how far apart they have to be, in Canada has improved by half in the time—you know, it is half what it was 20 years ago, when they started. That is a pretty good track record on safety.

Ms. BROWN. Yes, sir?

Mr. RINALDI. We do run a safe system. We could always be safer. I don't want to rest on our laurels.

The budget constraints with the FAA, and the fact that they don't want to expand into new technology such as remote towers—we have an airport in northern Virginia, Leesburg Airport, runs about 125,000 operations a year on a one-runway operation. It is close to Washington Dulles, and it is very close to the Washington, DC, airspace. The Commonwealth of Virginia and the town of Leesburg have been asking for a control tower there, and the FAA doesn't want to expand their services. This is where I think we should be focusing on expanding services out there, to ensure that we have increased the safety of the system.

Ms. BROWN. You mentioned also training, diversity, and—you know, I have met with several air traffic controllers over a period of years, and they have talked about what the additional—what they need. I mean to think that we could have a system, and that you all could be operating and the rest of the airport is closed is not going to happen.

Mr. RINALDI. That is correct. But what we are looking at is making sure that we are expanding the safety modules, and implementing new technology so we can enhance the safety of the system.

Ms. BROWN. How do you think privatizing will enhance that?

Mr. RINALDI. I think if we could streamline the bureaucratic red tape of the FAA, and give us a stable, predictable funding stream, we would be able to enhance the safety of the system.

Ms. BROWN. Why can't we do it with our present system? I yield back the balance of my time.

Mr. LoBIONDO. Thank you. Mr. Hardy?

Mr. HARDY. Thank you. I would like to thank the chairman for holding this meeting here today.

You know, I am from Nevada, and we have UAS [unmanned aircraft system] test appropriations for our site for—out in Nevada we have the McCarran International Airport within our State. And what we are talking about here, I believe, is one of the most vital, important things, not only for our State but for our Nation. For the world, so to speak, because we are the busiest place in the world.

However, at the end of the day, I don't think anybody can argue that we are—and there is no debate on it—that we are dealing

with technology from World War II, back when we were fighting Japan and Germany. Seventy-five years we have been dealing with this type of technology. Paper slips really concern me.

So with that being said, not only is it dated, but it is also costly. It shows here, according to the FAA, airline delays and cancellations are costing passengers and shippers in the airline business nearly \$33 billion annually. And the trends are increasing. The FAA projects that passenger growth—will continue to grow for years ahead. So, let's get straight to what we are using, 75-year-old technology. And inefficiencies in the system are still costing us \$30 billion a year, or annually.

With the safety and security being paramount, as Ms. Brown has said, I believe that the chairman was absolutely right when he uses the word “transformative.” Speaking of safety, I would like to talk to Mr. Calio. In your testimony you state that reform will make our exceptionally safe system even safer. I want to examine that just a little bit further, and kind of get a little down deeper, and have you share your thoughts with us on how that works with this new ATC modernization.

Mr. CALIO. We all keep repeating it, and it is true, we have the safest system in the world. We believe we can have an even better system with the reforms that are proposed in this bill.

Right now we are hamstrung by a system that takes years and years to have good products that could make us even safer get to market. If you look at some of these reports—and the easiest one for you to look at would be what came out in January from the inspector general—and talk about the number of acquisitions that are online, the number of projects that are online, how far over time they are, how much over budget they are, and it shouldn't really take that long.

And, you know, we are not trying to throw Canada in anybody's face, but they are bringing products on the market that they are selling all over the world to other air navigation service providers in 0 to 30 months. We have some things that have been online for 14 years. By the time a lot of our products come in, they are already outdated.

The FAA, as currently structured outside of the safety regulation, cannot in any fashion keep pace with the—with technology. They are too far behind. Mr. Poole has laid out the reasons why. With all that together, and with the FAA being able to focus—and the Government being able to focus on safety, which is where they should be focusing, it would improve.

And again, I would point to the MITRE study, which took six air navigation service providers around the world, at the request of the FAA, and found that in each case safety was maintained or got better, and that the focus on safety by both the regulator and the operators increased.

Mr. HARDY. Thank you. Turning to Mr. Rinaldi, you know, as a former business owner myself, I know what happens when there is uncertainty in the market, and what is going on. Can you give me just a little bit of an idea about your thoughts on this uncertainty, and the impacts with the controllers?

Mr. RINALDI. Well, I think that, you know, if you just look at the uncertainty of the funding—and as we approach a possible shut-

down or a deadline that something has to pass, the agency actually stops focusing on the modernization projects, and they actually start to scale back, just in case they go into shutdown mode. They dust off the manuals, and everybody starts going—everyone is focused on the potential shutdown.

So, even though we may have only had 15 or 50 days—whatever the quote was earlier about shutdowns—over the last couple decades, it is the threat of the shutdown that leads us up to as we start scaling everything back and preparing and making sure that we would be able to run with—you know, on a barebone basis with the shutdown.

So, the uncertainty loses much—so much more productivity as the issues nongermane to the safety of the National Airspace System are being thrown around back and forth in—

Mr. HARDY. I would like to just touch on the same thing with Mr. Calio. You talked about uncertainty and funding streams yourself. Do you share the impact of that uncertainty with the airlines, that it has on airlines also?

Mr. CALIO. Anything that affects the air traffic controllers and operations affects the airlines, and being able to get your constituents from one place to another.

I think it is interesting to note that, over time, Nav Canada hired more air traffic controllers than they started with. We believe that could happen here, and it should. Mr. Rinaldi can talk to it much better than I can, about how long it takes to get an air traffic controller online. And they are understaffed.

Mr. HARDY. Thank you, Mr. Chairman. I yield back.

Mr. LOBIONDO. And thank you. We are going to ask for just a quick, 5-minute recess. We have at this point two more first-round questions from Mr. Carson and Ms. Titus, and then we will be going to round 2 for questions.

I know Mr. DeFazio has some, I know that I have some. So we will be looking to come back in 5 minutes. So we are in a 5-minute recess.

[Recess]

Mr. LOBIONDO. I would like to try to call the committee back to order, please.

So we will now go to Ms. Titus.

Ms. TITUS. Thank you very much. Just to kind of recap—because I have been sitting here a long time—we were presented with this major bill a week ago. It is a bill that transforms, not reforms, despite whatever the new jargon is. We have had one hearing today, which came at the request of the Democrats—weren't even going to have that—and tomorrow we are going to mark it up.

We have had 3 hours of hearing, and almost all the questions have been answered with very little specificity. In fact, every answer is basically a, "Well, trust me, this is just the beginning of the process, we are going to work it out." Well, that is not very satisfying. And so I have some concerns that I hope somebody can answer with something specific.

My first concerns, like a lot of them, are about cost. I represent Las Vegas. And, as you all know, that is the—one of the busiest—world's top tourist and convention centers. And I often hear from the hospitality industry if you increase the cost of tickets, that is

going to hurt the number of people—or perhaps negatively affect the number of people who come for recreation and for business. Also we have tour operators as a big industry that provides transportation out to see the dams, Colorado River, Grand Canyon. And those costs will be affected.

So I am just wondering if anybody can guarantee me that, since the purpose of this privatizing—I have heard this over and over, too—is to run more efficiently, have cost savings, if those cost savings will be passed on to passengers, or if they are going to go into the bottom-line profit of airlines. So can I say to my industry, “Yes, this is going to help to bring down costs, it is not going to increase costs”?

Then the second major concern I have, which is also one that is shared by many, is the representation on the board. My colleague, Mr. Hardy, was talking about how big the drone industry is in Nevada. That is true, it is growing everywhere. And yet you have no representative on the board. The air tour operators aren’t on the board. Air ambulances aren’t on the board. Consumers aren’t on the board. Department of Defense, not on the board. Now, you got some little extra advisory committee over here, but we all know that is just window dressing. They don’t really have any kind of authority. So how are their views represented by this board?

And then the third question that is—maybe somebody can address is there has been a lot of focus on union issues for air traffic controllers. But what about the other unions, those who do the safety inspections, the tower maintenance, the construction? Is this board going to honor Davis-Bacon provisions? Or, now that it is a private Corporation, can they just throw all that out the window?

So whoever wants to answer those three questions, I would appreciate it. And maybe we can start with you, Mr. Poole.

Mr. POOLE. I can tell you that, as I said earlier, there is a large potential for costs coming down because of the economies of scale inherent in air traffic control, and the ability to focus more on running the thing as a business.

Now, whether airlines will pass along cost savings that accrue to them in terms of tickets, that I cannot answer. You would have to ask airlines that question.

Ms. TITUS. You know, so many times we have heard that you need to run it more like a business, and then we let businesses do it, and then Government has to come back and bail those businesses out because, sure enough, they couldn’t do it more efficiently and effectively and cheaper than we could—

Mr. POOLE. But the good news here is that this is not a science experiment, because we have 50 or 60, depending on how you want to count it—or 80 countries that have shifted this outside of the transport agency, put the ATC system at arm’s length from the safety regulator, and it is working very well. And we are seeing cost savings, we are seeing no negative impact on savings. And, in many cases, improvements in safety.

So, I mean, it is—nobody can say you do X and you absolutely get Y. But we have empirical—

Ms. TITUS. That would be a science experiment.

Mr. POOLE. We have empirical data, and lots of it. So, I mean, I am pretty confident this is going to be a very big step in the right direction.

Ms. TITUS. But not in a country that is comparable to the United States.

Yes, sir?

Mr. BOLEN. Well, I think it is a leap of faith. I think we are being told that the costs are going to come down. We have not seen where there will be personnel savings, we have not seen where there will be closures. So that part is not laid out.

I will take a little bit of issue with what Bob Poole has said. There has actually only been a couple of countries that have moved air traffic out of Government entirely. So, you know, you are looking at Canada and the United Kingdom. You are not looking at 50 and 60 in all these other things. The rest of them are in Government. And what we saw with the United Kingdom, for example, is they did require a bailout when the economy went down.

With regard to the diverse groups that are not represented on the board, I think that is the challenge. We have the most diverse air transportation system in the world. It is constantly changing. It is constantly evolving. And the way that that community makes sure that its access to airports and airspace is protected is because of Congress, not because they were put into a board.

We are talking about turning this over to a monopoly, and letting the monopoly decide who can come in and who will stay out. I think it is a major concern.

Ms. TITUS. If I could just sum up real quick, it seems—Mr.—just a second. There has been an uncertainty of the shutdown, uncertainty of the market, uncertainty of this bill, uncertainty of who is on the board. Seems like maybe mandatory spending would be a better way to reform, rather than transform the system. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Sanford?

Mr. SANFORD. Thanks, Chairman. Two quick thoughts. One, I guess this would be more directed to the chairman. I just want to go on record as a concern, the, in essence, \$20 billion from a budgetary impact standpoint going forward.

As I understand it, the chairman is over, I guess now, testifying before the Committee on Ways and Means, and maybe gets that wrinkled out, or leadership will. But I just—you know, the—what happens with the money, I think, is very, very important, going forward. That is outside the jurisdiction of this committee, but I think it is very, very important.

On to this bill, though, at this point in testimony everything that could be said has been said. But if I might turn to you, Mr. Calio, if you were just to wrap it up—because you hear the different points. I saw the Reason article, and it talked about how, at the end of the day, this bill would save money, it makes the system more efficient.

You know, if we are going to live in Thomas Friedman's flat world and we are competing with folks in India and China and a whole lot of other places around the globe, fundamentally, as a society, we need to look for ways that make us more competitive, that bring down costs.

Any wrap-up from your end that you would pass on to me, as I take this message back home and inevitably talk about it in town hall meetings?

Mr. CALIO. Yes. We can make our system a lot better. The way the FAA currently operates, we have thrown—you have thrown billions and billions of dollars at the FAA, and it has not been well spent. And it could be better spent for good products and good acquisitions, better facilities that would make air travel much better, even safer than it is now, and would provide the opportunity for more commerce than we have now.

In addition to that, you wouldn't be faced with an uncertain funding source. The users of the system, except for certain users of the system, would pay for that, and you would have a much better way to provide people in and out of the system.

Mr. SANFORD. So, again, summing it up at this point in testimony, what we would probably agree on is that change is something that we naturally fear. There is uncertainty, certainly, that comes with any change. But in the whole of your, you know, professional estimation, you would say this change would be for the good, from the standpoint of the consumer, the taxpayer, and the safety of the system in the aggregate?

Mr. CALIO. I absolutely would. We could replace the current FAA, outside of the safety regulator, with a construct, with an entity that would be far more efficient.

The FAA, you can count—I don't want to misspeak—there are multiple facilities across the country, multiple centers across the country. They each have an HR department, they have their own accounting department. You could keep going down the list. And, you know, they build up these silos that make it very difficult to get anything done.

So if you want to change that, you have to address it. You know, you don't keep holding more and more hearings and try to push the deck chairs around, which is what we have done. And all of these different reports tell you that it just doesn't work. You know? You all have tried, you know, through oversight, through mandates in bills to get things done.

And the culture is resistant, as Mr. Poole pointed out, and they just don't make the progress that we need to have made to get products online, to have better procedures, better processes, and get—you know, for instance—again, I hate to keep going back to it—I don't hate to—you know, more controllers online.

Mr. SANFORD. Sure.

Mr. CALIO. They run the system.

Mr. SANFORD. One last question in the minute and a half I have got left. I guess this is for you, Mr. Poole. Some opponents have said, you know, there might be problems, though, with regard to, for instance, shooting approaches on instrument flight, that, you know, you shoot your approaches on good days so that you are ready on a bad day. But if it is going to cost you more in a user pay-type system, people might be—particularly general aviation types—might be prone to shoot fewer approaches.

That is a red herring? It is false? Or, no, it is partially accurate, but—



Mr. POOLE. Well, it is false in the terms of the way this bill is written, because there are no user fees for general aviation, period, full stop. So that problem cannot arise. And I think airlines have their training programs—airlines that do pay fees are going to continue to do all the training they need to do, whether there are fees or not, because they know safety is their bottom line, and they—

Mr. SANFORD. How about the middle ground, though, with contract pilots that—say you are a—run a jet type of scenario—I don't know if they run their own training programs, or you hire contract pilots that have X-number of hours, and they have got to keep up with their own hours and their own training. Could it negatively impact those guys, or—

Mr. POOLE. No, because they will be doing it at GA airports, mostly likely, and they would only—I mean if the airport—if the GA airport has its own landing fee, that is entirely separate from air traffic control. So there would be no ATC charges for those individual pilots, when they are shooting touch and gos, and that sort of thing.

Mr. SANFORD. OK. I yield back. Thank you, Mr. Chairman.

Mr. LOBIONDO. Thank you.

Mr. Carson?

Mr. CARSON. Thank you, Mr. Chairman. I think we all can agree that we want to keep our skies the safest in the world, period. And I am not convinced that the comparison really to Canada or European models is necessarily accurate. We have twice the airspace and the volume of air traffic in the U.S.

My question is for Mr. Bolen. What are your thoughts, sir—what are your thoughts concerning what my colleagues cite compared to the airspace we see in Canada?

Mr. BOLEN. Well, I think it is an apples-to-oranges comparison. Canada is very different from the United States in the size, as you pointed out. They are also very different because they have all privatized airports in Canada. So I don't think it is an apples-to-apples comparison. And certainly the business aviation people I know up there have made that point over and over again.

I think it is, as I said before, a real leap of faith to think that doing this is going to make better technology and NextGen and all these other things necessarily happen. Certainly in the United States the general aviation community has been second to no one in pushing for the new technologies, in promoting NextGen. We were the first to equip with GPS. We were the first to fly those routes, and we continue to be pushing that, including the mandates for ADS-B.

So, I think the idea that we are going to solve all our problems by giving the system over to the airlines is, at best, a leap of faith, and I think it is a flawed premise.

Mr. CARSON. Thank you. And this question is for everyone. I would like to hear your concerns and your views about the addition of a physical barricade outside of the cockpit. We have heard from proponents who point out that this measure could be effective and not so expensive, but I have also heard objections. And I am planning to offer an amendment to add a secondary barrier to help with this effort. What are your thoughts, in terms of it being an additional safety procedure?

Mr. POOLE. Well, I have looked into this in my role on dealing with aviation security, and I think it—the studies that I have seen suggest that it would be a cost-effective measure, be better than a lot of other things that the TSA is currently doing or mandating. A one-time cost that would be analogous to the one-time cost only of the reinforced main doors, as opposed to the ongoing cost of something like sky marshals, and so forth.

Mr. CARSON. Sure, sure. Yes?

Mr. CALIO. Mr. Carson, safety is our highest priority. We support the section of the underlying bill that calls for a full assessment of the safety of the cockpit. There are multiple layers of security in place today. Some of our members have installed secondary barriers. Others think that the current security procedures in place and multiple levels of security are sufficient. And, rather than just jump to a mandate, as is often the case, I think we ought to let the underlying bill work its will and see—and make the assessment.

Mr. CARSON. Yes, sir. Good job. Thank you, gentlemen. I yield back my time, Mr. Chairman.

Mr. SHUSTER [presiding]. Thank you. With that, Mr. LoBiondo is recognized.

Mr. LOBIONDO. Thank you, Mr. Chairman. For, I think, Mr. Poole, the FAA, as we know, currently depends on appropriations from Congress and, as we know well in Washington, future budget allocations are never really certain.

The Government Accountability Office found in a December 2015 report budget instability and uncertainty has seriously impacted NextGen implementation and air traffic controller staffing, among other things. How would the cost-based financing system and bonding authority provided in the new ATC Corporation provide for stable and predictable funding to finally achieve successful, long-term capital projects, in your view?

Mr. POOLE. Well, I think the biggest part of that, in answer to the question, is the bonding authority, because when you are doing large-scale capital modernization in just about any field, the sensible thing to do is not do it out of operating cashflow, but to bond—if you have a predictable revenue stream that the markets will accept, it makes very good sense to finance those large-scale capital—just like you would not save up the cash to buy a house and deprive yourself of the benefits for a long period of time, likewise we are depriving ourselves of benefits from air traffic modernization by funding it piecemeal, dribs and drabs, on an annual appropriations basis, as opposed to large-scale revenue bond financing.

You know, you don't build a new Denver Airport out of cashflow, you do it out of revenue bonds. So the same thing with—that is really the key here, I think, is to be able to have the revenue stream not only that is reliable for operations, but that gives you the means to do long-term, large-scale financing.

Mr. LOBIONDO. Again, for you, Mr. Poole. In March 2015, in testimony before our subcommittee, Mr. Matt Hampton with the DOT Office of Inspector General stated that one of the lessons learned from the other nations' experiences in separating and commer-

cializing their air traffic control function was planning for the transition period.

In your opinion, is the transition process included in this bill sufficient to ensure no significant disruption to NextGen and overall safety levels?

Mr. POOLE. I think it is a sufficient time. Most of these transitions have taken 2 to 4 years to work things out, get the fee system in place, and, you know, sort of redefine the organizational lines of business, and this sort of thing. And the transition period in the bill seems right in the mainstream of the experience in other countries.

The fact that our system is larger, I think, is completely—it is a red herring, because the system is already in place. The system is at the scale it needs to be. You are talking about a change in the management and organization of the workforce, and in how procurement programs are operated. But all the existing contracts would stay in place, you know, there would not be any kind of sharp disruption in ongoing operations or contracts.

So I think the several-year transition period in the bill is realistic.

Mr. LOBIONDO. Thank you. I yield back.

Mr. SHUSTER. Thank you. And I will yield to Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Earlier, Mr. Poole said that we would strive—or could, perhaps, under this proposal—have the lowest unit cost in the world. Does anyone disagree with that objective?

[No response.]

Mr. DEFAZIO. OK, good. Now, let's move forward. The lowest unit cost in the world is Iceland, followed very closely by Mexico, followed very closely by India. Now—and this will be a question to Mr. Rinaldi.

First, I got to congratulate you. You drive a tough bargain, and I have never seen such good labor protections in any piece of legislation that has any chance of passing a Republican Congress. So congratulations.

Mr. RINALDI. Thank you, sir.

Mr. DEFAZIO. Good work for your members.

Mr. RINALDI. Appreciate it.

Mr. DEFAZIO. In fact, it is so good I hear the Freedom Caucus is opposed to the bill, because they don't like the labor protections. I will give you that.

But now comes the part that you won't like quite as much. You know, you say in a note you sent out that we will be able to negotiate a shorter workweek. So somehow we are going to strive to have the lowest unit costs in the world—that is competing with the air traffic controllers in India, where they don't bother to train pilots sometimes, or Mexico—what do air traffic controllers earn in Mexico?

Mr. RINALDI. I don't know, and I did not send out a memo that said to my membership that we were going to have a shorter workweek.

Mr. DEFAZIO. Well, it is a ATC Corporation questions and answers—

Mr. RINALDI. From when?

Mr. DEFAZIO. When was this? This week. And it says in—under A16, talking about NATCA members not being contractors, and then it goes on to say that.

Mr. RINALDI. No.

Mr. DEFAZIO. So—

Mr. RINALDI. We did two telcons this week with our membership, where they were—had many questions. What—maybe it wasn't captured correctly.

Mr. DEFAZIO. OK.

Mr. RINALDI. What I did say is around the world they work a shorter workweek than we do.

Mr. DEFAZIO. OK.

Mr. RINALDI. We work the most amount of hours, the most amount of airplanes—

Mr. DEFAZIO. Right. But the point I am making is we have all agreed you want the lowest unit costs in the world. Second—let's be second lowest. That means we are going to beat Mexico. One of the largest components of this system is labor. It is not a—that capital-intensive. Labor-intensive system.

And Mr. Poole is shaking his head—so how—we would have to be how much more productive than Mexico or India—

Mr. POOLE. Let me—

Mr. DEFAZIO. No, Mr. Poole, I haven't recognized you.

Mr. POOLE. All right.

Mr. DEFAZIO. So this is a question for Mr. Rinaldi, because I think this goes to the heart of this issue. I like the labor protections. I am very concerned about where this whole thing could head, as a private Corporation, in terms of, you know, getting the lowest unit cost in the world, what that means for safety, and what it means for the workers after we renegotiate contracts.

Mr. RINALDI. So here is the thing. You asked the question do we want the lowest cost of unit. What we want to make sure is we run the safest, most efficient system in the world. That is what the air traffic controllers want. I am not worried about the lowest cost of unit.

But what I am worried about is our current environment. And I applaud you for working with us, knowing that status quo is unacceptable, and knowing that we would never support a for-profit model. So anything that falls in between that, we are willing to work with you and the chairman and the committee on anything that works there.

My goal is to make sure we continue to run a safe and efficient system, we staff our facilities, we build new, modern facilities, and we have modern equipment to run the aviation system into the future. Currently, right now, we are hanging on. But if this continues down the same path that we have done for the last 10 years, we are going to struggle, and we are going to have to reduce capacity, because we just want to have controllers to open up positions.

Mr. DEFAZIO. I—OK. I would agree with that statement.

Now, here is a point. Of course we are leaving the people who have to certify the new approaches, certify the operations, certify the new equipment, they are all subject to general fund appropriations, and they are over here. They are also the people who have

to certify aircraft. The manufacturers aren't thrilled with this idea. They are subject to appropriation, they are over here.

Mr. RINALDI. And a lot of—

Mr. DEFAZIO. They aren't protected by being under the—whatever fee structure this board creates.

Mr. RINALDI. Well, it would be kind of schizophrenic, because I am going to be working—I am going to be representing a lot of the members that stay behind in the FAA.

Mr. DEFAZIO. Right.

Mr. RINALDI. Because I am—they are still members of our union. We will be working those issues. I will still be coming to you and asking you for appropriations to make sure we—

Mr. DEFAZIO. Right. But wouldn't—

Mr. RINALDI [continuing]. Do this thing—

Mr. DEFAZIO. Wouldn't it be better to bring them along?

Mr. RINALDI. Into a whole—like I said, we applaud your efforts, and—

Mr. DEFAZIO. OK, all right. Thanks, OK.

Mr. RINALDI [continuing]. We are willing to work on anything that is not status quo—

Mr. DEFAZIO. OK.

Mr. RINALDI [continuing]. And anything that is not for profit.

Mr. DEFAZIO. Thanks, Paul. I want to make two quick other points.

I heard repeatedly that the Secretary will appoint people who support the public interest. As I said, President Sanders, yes, I bet so. President Trump? Maybe not so much. Consumers might not be at the top of the list. And all it says is directors appointed by the Secretary. It doesn't say that they have to represent consumer or public or any other interest. It could be—they could be two more airlines.

And then one other point. You know, 61 percent of the operations every day are regional airlines, and that is 45 percent of the passengers, which presents a problem in the system in—when we talk about LaGuardia, and things like that. But the point is, they don't get a seat on the board. So the airlines that are carrying nearly half the passengers in the country and do 61 percent of the operations do not get a seat on the board.

You know, Mr. Calio was asked about why four major airlines, and he said, "Well, it is kind of proportional," but it is not exactly proportional when you look at commercial service.

So, you know, there are many, many issues that I think need to be ironed out. I have so many concerns about this construct. I appreciate the opportunity for the hearing, Mr. Chairman, but I really believe that, you know, we are not ready to go forward with this proposal. You are, and we will take it up tomorrow, and we will see where it ends up.

Mr. SHUSTER. Thank you very much.

Mr. Poole, if you would, answer that question on unit costs.

Mr. POOLE. Yes. What I was trying to say was that I think we were just a little bit bamboozled, because the proper standard is for developed Western countries, the lowest unit cost, not for all countries in the world, because the labor costs are tiny in comparison to ours in developing countries.

Mr. SHUSTER. Thank you.

Mr. Rokita?

Mr. ROKITA. I thank the chairman. As I said before, I thank you for your leadership, sir, in getting us to this point.

When I ran out of time we were discussing an example. And if I was a member of this board, perhaps representing the airlines, what would prohibit me in this language from making a motion to choke off of a—access to a general aviation airport that we knew I had potential customers flying into, so as to give a competitive advantage to selling more airline seats.

And then, during the break, for the record, I will mention that group's—stakeholders of all sides came and offered language I didn't find on point to my example. That is, from everything I am reading here, I can, in fact, make such a motion. And if it is voted unfavorably, it then moves to a different section of the bill, section 90501, called "Safety, Oversight, and Regulation of the Corporation," and that is by the FAA.

So this does move to the FAA for final approval, my motion, my successful motion. And—but the problem is it is only looked at by the FAA under this proposal for safety. So that is to say that if—as long as that choking off of the GA airport doesn't adversely affect safety, the language says in section 3 on page 74, "The Secretary shall approve the proposal."

Then it further goes on to say in this language, on page 76, that if I am an aggrieved party on the board—not on the board of the general public—and I want to fight that approval and take it to court—starting on page 76, line 11—the court may overturn my motion, the approval of the Secretary, only upon the finding of clear error or abuse of discretion. A very high standard.

On the other hand, if my motion failed on this board, and the airlines, for example, wanted to go—and this—it is not an antagonistic example, I am trying to get us, Mr. Chairman, a path forward here—but if I lost the motion, and I was interested in having that motion approved to choke off, for example, that GA airport, and I took it to court, I get to have a trial de novo. That means the court is not bound by any deference to the Secretary or anybody else, the exact almost opposite standard that abuse of discretion is.

So the scales aren't even here. And I guess what my example illustrates is that when you have natural competitors in the same place on the same board, this is very hard to adjudicate for board governance purposes. And when we are talking about national assets, treasures, really, whether it is our airspace or parks or whatever else that have different users for different reasons, it makes this kind of leadership that is exemplified in this bill—again, leadership that I applaud—very hard to get done. But I am committed to try to do that.

Another thing that was—another issue that was brought up, and I was—testimony that was made I completely disagree with—is that there are no user fees for GA. There are user fees for general aviation. And, Mr. Poole, for the record, he is furrowing his brow right now, and that is because Mr. Poole equates general aviation with nonprofit, non-revenue-generating activities. And that, in fact, is not the case. This language specifically blesses fees for a seg-

ment of general aviation that generates revenue, and I would certainly argue not always makes profit, just as Nick says about the airlines. I mean I—so this is a user fee system that we are proposing here for general aviation.

Finally, in my first round of questioning I asked about fiduciary duty and so on and so forth, and it goes to my earlier comment about how can you operate this board effectively with such—with these different stakeholders and users who have directly conflicting interests sometimes—perhaps day to day, perhaps longer. And it was said that, well, no, the fiduciary duty is to, in fact, the Corporation, not the people you are supposed to be representing on this board, which, if that was really the case, Nick or GA or anyone else wouldn't have any problem with how many people were on the board, I would guess. But the fact is they are representing their interests, that is why they are there.

And, in fact, on page 47 there is an exemption that says an entity that has a material interest as a supplier, client, or user of the Corporation's services can be on the board if the board unanimously determines with the concurrence in writing of a majority of the nominating members that such material interests would not likely or adversely affect in a material way the individual's ability to discharge the individual's obligations as a director.

So, you know, this kind of language says that that—those conflicts do exist, and they are real, and we ought to treat them this way and figure out a way, using this language as a base to get us where we want to go, to maintain the safety of a system, to make it more efficient, to leverage the technologies that we have that we know are available, so that we can remain competitive and win in a 21st-century world. I yield back.

Mr. SHUSTER. Yes, Mr. Rokita, just—you brought up a couple of interesting points. I think we may have some solutions there.

The first you pointed out was—I believe you said it was for safety, but then it goes on to say, “and otherwise consistent with the public interest.” That is something we can certainly sit down and look at and try to strengthen that, take that off the—maybe have a—more peace of mind on that particular part of it.

The other thing was the board member—that had to do, when we looked at that, of—as—if somebody had some kind of technical expertise that we might want to make an exemption for. But again, if that is something that we can talk about, we may be able to strengthen that to take away some of those objections or concerns that you have.

Mr. ROKITA. The chairman missed my mention that I will have a few amendments.

Mr. SHUSTER. What is that?

Mr. ROKITA. The chairman missed my earlier comment that I am going to have a few amendments.

Mr. SHUSTER. Well, the chairman knows his Members. I knew you would have a couple of amendments.

[Laughter]

Mr. SHUSTER. But anyways, those couple things you mentioned, I think we might be able to work through those, I think, and we will be looking at your amendments, also.

So, with that, Mr. Sanford? You are done? I guess it looks like we are done for the day.

I want to thank everybody for being here. Mr. Bolen, Mr. Poole, Mr. Rinaldi, Mr. Calio, thanks for being here. Again, I look at all the folks at that desk there, they have—everybody there has been there for 20 years or so, some more than others.

And you know we have been talking about this and talking about this, and we have got a system that just hasn't been able to modernize the way we think it should, it hasn't been able to modernize the way other countries—I still come back to that—when I learned this—a couple weeks ago that Canada, by the end of 2017, is going to be fully deployed, a worldwide GPS system, it is not America, it is the Canadians doing it, and I think that is—you know, one of the things that I think the Canadians look at, in talking to them, is they need more planes in their system to continue to drive down the cost. And that is exactly what they are going to do.

And it is—again, it would be wrong for us, especially on our watch, to let another country become the gold standard, the leader in worldwide air traffic control. So, again, I am committed to try to find a way forward on this, to do what is right, what I believe is right for the country, what is right for Americans, and keeping the safest system in the world.

So again, thank everybody for being here. This is adjourned.

[Whereupon, at 1:42 p.m., the committee was adjourned.]



**National Air Traffic Controllers Association  
AFL-CIO**

**Testimony of  
Paul Rinaldi, President, National Air Traffic Controllers Association (NATCA)  
"Review of Air Traffic Control Reform Proposals"  
House Transportation and Infrastructure Committee  
Wednesday, February 10, 2016**

Thank you Chairman Shuster, Ranking Member DeFazio, Chairman LoBiondo, Ranking Member Larsen and members of this committee.

I am grateful for the opportunity to testify today as we discuss air traffic control reform and the FAA Reauthorization bill, H.R. 4441. NATCA supports this bill, because it contains necessary reforms that we believe will help us maintain the safest, most efficient airspace in the world while we move forward with innovative modernization projects, while protecting the workforce.

We all have a stake in this country's National Airspace System (NAS). It's an economic engine, contributing \$1.5 trillion annually to our gross domestic product and providing over 12 million American jobs.

Currently, we run the largest, safest, most efficient, most complex, and most diverse airspace system in the world. Our system is unique, unequalled and unrivaled by any other country – due in large part to the impeccable work of the men and women I represent who run this system. The United States airspace system is considered the gold standard in the world aviation industry. And yet, we have come to the difficult reality that change may be needed-- globalization and innovation are driving dramatic changes in the aviation industry and sadly our current structure cannot keep up.

The current aviation system has served us well until recent years. Unfortunately, we no longer have a stable or predictable funding stream and this uncertainty has caused many serious problems for the system.

Without change, we face continued funding uncertainty. We all remember the disruptions we experienced in 2013 with sequestration. The FAA scaled down all modernization projects. The Agency looked at closing 238 air traffic control towers and tried to close 149 of them due to purely financial reasons, without regard to operational considerations or what was best for the NAS. They considered reducing services at many airports across the country. They halted air traffic controller hiring for the full year, which is still contributing to staffing problems today. The FAA was forced to furlough air traffic controllers, causing rippling delays through our system. Further, the Agency went to a fix-on-fail maintenance philosophy and stopped stockpiling critical parts for essential equipment. These decisions were all made in order to meet the budget restrictions of sequestration, not for operational reasons or to ensure safety. Our 24/7 aviation system has been challenged by 23 extensions in authorization, a partial shutdown, a complete government shutdown as well as numerous threatened shutdowns. We are currently in our first extension, and if we are honest with each other, we are looking at the very least, at one more extension. All stakeholders in the NAS must work together to ensure that the United States remains the world leader in aviation.

**NATCA Testimony**  
**Paul Rinaldi, President**

With all of these challenges in mind, we applaud the hard work of all the members on the Committee to draft a comprehensive FAA reauthorization bill to address these long-standing problems.

NATCA has publicly stated that any FAA restructuring must achieve the following:

In order to maintain NATCA's support, any new system must ensure that our members are fully protected in their employment relationship. Maintaining our members' pay and benefits, including retirement and health care, along with our negotiated agreements for their work rules, are crucial to us.

- Safety and efficiency remain the top priorities. This means that we cannot allow maintenance to lag, and cannot reduce staffing to save money. The NAS must remain fully staffed in order to ensure both safety and efficiency.
- A stable, predictable funding stream must adequately support air traffic control services, staffing, hiring and training, long-term modernization projects, preventative maintenance, and ongoing modernization to the physical infrastructure. The stop and go funding crises create staffing shortages, which slow the hiring and training process. Inadequate funding also prevents NextGen modernization projects from timely implementation. Any new system must improve upon the status quo, by providing an environment that promotes growth in the system and allows us to lead the world in aviation innovation.
- A dynamic aviation system that continues to provide services to all segments of the aviation community, from commercial passenger carriers and cargo haulers, to business jets, to general aviation, from the major airports to those in small communities and rural America. We cannot emphasize enough how important it is that a new system continues providing services to the diverse users of the NAS. The United States has a vibrant general aviation community that relies on us. At the same time, rural America's economic success is connected to the access we create with our comprehensive NAS that serves even the most remote areas.

We believe the legislation addresses NATCA's primary issues of concern.

A not-for-profit independent organization run by a board of stakeholders could deliver results similar to those we have seen in Canada where NavCanada has had two decades to prove itself as a safe and innovative airspace system.

Finally, I want to state clearly that we will continue to vigorously and carefully review this legislation at all times. If at any time there are changes to this bill, we will immediately examine them to ensure the bill continues to align with our organization's policies, practices, and principles. We reserve the right to withhold our support if any changes cause the bill to violate our principles.

We are excited to be a part of this important discussion. Thank you for the opportunity to comment on this bill and I look forward to any questions.



Testimony

**STATEMENT OF AIRLINES FOR AMERICA  
BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
REVIEW OF ATC REFORM PROPOSALS  
FEBRUARY 10, 2016**

Airlines for America would like to congratulate the Committee for the years of work that have gone into the pending Federal Aviation Administration (FAA) reauthorization legislation that is the subject of this hearing. The Committee has energetically sought the views of a wide range of stakeholders in preparing the legislation. We are particularly grateful for the thorough, focused efforts of the Committee in developing what is clearly a very sensible legislative plan to modernize our nation's air traffic control system. Those efforts will yield immense benefits for air travelers, shippers, airlines and the communities that they serve, aviation community employees and the national economy. Acceptance of the status quo, in sharp contrast, would consign those who depend on civil aviation to the limitations, frustrations and inefficiencies that we have repeatedly experienced with air traffic management over the last few decades. That would be an intolerable outcome for a country that has historically been regarded as the worldwide leader in aviation.

Given this, we can clearly discern today what good public policy demands: adoption of the transformation of our nation's air traffic control system that the bill promises.

**OVERVIEW**

The air traffic control system is the over-arching factor in the airline business. U.S. airlines on average operate 27,000 flights, carry 2 million passengers and transport 50,000 tons of cargo every day. The ATC system directly affects their ability to deliver these vital services. This means that the ripple effect of inefficiencies and capacity constraints in the ATC system's performance can be broad and costly.

An optimally functioning ATC system is therefore indispensable to the wellbeing of our industry and our nation's economy. Airlines, their employees, the air traffic control workforce and airline customers have everything to gain from workable ATC reform. They over time will suffer grievously and increasingly if the system is not fundamentally improved. That is the unmistakable reality that we confront today.

We, and most other stakeholders, understand the pressing need to improve the ATC system. This, it bears emphasizing, is not unexplored territory. That need has been identified, analyzed and discussed for decades. In fact, at this point it's safe to say that this topic has been

thoroughly pureed. We know what the problem is and how to pursue effective long-term improvements. We also know the benefits to stakeholders of having a system that fully embraces available technology and facilitates the introduction of future technology, and, in doing so, enhances safety.

Regrettably, though, the United States is not in the front ranks of those air traffic service providers that are capitalizing on available technology. That deficiency needs to change promptly.

#### THE PARTICULARS

**We know what needs to be done: ATC reform has been debated and analyzed in the United States for decades while being successfully implemented in other countries.** For years, there has been widespread recognition among U.S. policymakers and stakeholders of the need for modernization of air traffic control services. This recognition is thoroughly bipartisan. Modernization is not about politics; it is about formulating and implementing sound public policy for all who depend on air service. There is a long string of reports from presidentially appointed aviation commissions, the Department of Transportation Inspector General (IG), the Government Accountability Office (GAO) and independent private-sector experts that all have found that the FAA has not met expectations on delivering NextGen.<sup>1</sup> It is important to keep in mind that the reference points for most of these studies have been congressional legislation that has been specifically intended to instruct and enable the FAA to further modernize.

The takeaway from those studies is that the problem is not FAA leadership or the air traffic control workforce. Instead, it is the limitations of the funding and governance structures under which air traffic management must function today. Those are basic structural flaws that over time will only worsen. But they are soluble. Experience in other countries clearly teaches us that. We, however, need to act now; these problems will not correct themselves.

While there have been some signs of progress in recent years in implementing NextGen, numerous IG and Government Accountability Office reports have documented FAA's ongoing challenges with implementing and delivering benefits from new technologies. As an example that has been well documented, ERM was originally scheduled for completion in 2010 and finished more than \$400 million over budget. Data Communications is scheduled to be deployed in selected towers in 2016 and in the FAA's en route centers in 2019. In contrast, NAV CANADA began deploying controller-pilot data link communications in its area control centers in 2011 and completed that rollout in 2014.

Importantly, one of the key issues for NextGen in the current governance and funding structure is funding uncertainty. As GAO notes:

"Both the aviation stakeholders and FAA officials we interviewed regard budget uncertainty as a challenge for FAA. Forty-three [out of 76] stakeholders raised budget uncertainty as a difficulty for FAA's ability to continue operation of an efficient ATC

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<sup>1</sup> Federal commissions have identified the need for modernization for decades. For example, the National Commission to Ensure a Strong, Competitive Airline Industry, chaired by former Virginia Governor Gerald Baliles (1983); National Civil Aviation Review Commission, chaired by former Secretary of Transportation Norman Mineta (1997); and Report of the White House Commission on Aviation Safety and Security ("the Gore Commission") (1997).

system and/or implementation of NextGen. ... Stakeholders also indicated that the current budgetary conditions—the fiscal year 2013 budget sequestration (the across-the-board cancellation of budgetary resources) along with the associated employee furloughs and the October 2013 government shutdown—have made FAA's funding less predictable. In turn, this can make it difficult for FAA to run a 24/7 operation and maintain the ATC system as part of the transition to NextGen. FAA senior management generally agreed with the stakeholders' perspective that unpredictable budgets make planning and managing the ATC system and NextGen programs difficult and result in delays and inefficiencies."<sup>2</sup>

Thus, taken as a whole, the current situation is a continuation of persistent shortcomings in implementing air traffic management improvements that are key to benefiting air travelers and shippers. As noted above, a variety of reports – including those from governmental monitors – have catalogued those problems and the drag on modernization that they produce.

**We know how to fix the problem.** Fortunately, nearly every developed country around the world has embarked on modernization. Their experiences are informative but we are not proposing a wholesale adoption of any one model. We support examining all the lessons learned in these initiatives and creating a unique U.S. service provider that reflects the particular needs of our operating environment.

In addition, Congress has previously enacted legislation that fundamentally reconfigured the responsibilities of federal agencies with civil aviation functions to produce long-lasting, far more effective entities. This gives us additional confidence that today's initiative can be achieved. For example, Congress in 1958 shuttered the Civil Aeronautics Administration, which had resided since 1940 in the Department of Commerce, and replaced it with the Federal Aviation Agency (now the FAA).<sup>3</sup> Congress in 1967 removed the accident investigation responsibility from the Civil Aeronautics Board and transferred it to the newly created National Transportation Safety Board.<sup>4</sup>

These were sweeping realignments at the time. Congress, to its credit, recognized in each instance that the status quo was unacceptable and that basic functions dealing with civil aviation needed to be realigned to best serve the public interest. It enacted legislation that accomplished those necessary realignments. Aviation in this country is immeasurably better off because of Congress' far-sightedness. These legislative actions demonstrate that an indispensable function can be shifted and flourish.

**We do not advocate "privatization."** We are not advocating to privatize the air traffic control system. This will not be a profit-making endeavor. As long-time U.S. Senator Byron Dorgan cogently wrote late last year: "Anyone arguing that ATC reform is about 'privatizing' or creating a 'profit-making' enterprise doesn't understand the issue or doesn't want you to understand it. The proposal is to establish a *federally chartered, non-profit organization* representing **all** stakeholders, including the federal government."<sup>5</sup> To be crystal clear, we do not support the

<sup>2</sup> GAO, "Air Traffic Control System: Selected Stakeholders' Perspectives on Operations, Modernization, and Structure," September 2014, GAO-14-770, at 14, <http://www.gao.gov/products/GAO-14-770>.

<sup>3</sup> [https://www.faa.gov/about/history/brief\\_history/](https://www.faa.gov/about/history/brief_history/).

<sup>4</sup> <http://www.nts.gov/about/history/pages/default.aspx>.

<sup>5</sup> <http://thehill.com/sponsored/content/263239-5-things-you-need-to-know-about-air-traffic-control-reform> (emphasis added).

creation of a for-profit private entity and realize that all users of the system must be recognized. Period.

**Reform will make our exceptionally safe system even safer.** One of the biggest benefits of reform is to allow the FAA to focus on our shared highest priority: safety. The FAA's own study done in 2014 by the MITRE Corporation, which investigated six large foreign civil aviation authorities that had changed their organizational structures, found that separating the air traffic organization from its regulator either maintained or improved safety.<sup>6</sup>

This common result from those separations should not be surprising. ATC reform will allow the FAA to concentrate on what it does best, regulate safety. Those advocating that a separation of the regulator and operator will have an adverse effect on safety are wrong. There is no inherent reason to tie the two functions together. They should be conducted at arm's length. Every other modal administration at the Department of Transportation operates that way, the FAA should be no different.

**Funding and governance reform will ensure that the vagaries of federal funding do not shut-down air traffic control services.** More than most, this Committee knows that the current funding and governance system subjects the ATC operation and modernization efforts to government-wide budget reductions and shutdowns.<sup>7</sup> Lest we forget:

- In July 2011, the lapse in FAA's authorization caused the FAA to stop work on numerous projects including NextGen modernization projects.
- In April 2013, the government-wide sequester caused the FAA to furlough air traffic controllers resulting in massive delays throughout the ATC system and the cancellation of hundreds of flights, impacting hundreds of thousands of passengers.
- In October 2013, the government shutdown again resulted in many FAA employee furloughs.

These are sobering reminders. Our industry depends on the provision of air traffic services on a 24 hours-a-day, 7 days-a-week basis by a monopoly service provider. There is no alternative, there is no substitute service provider. We need an ATC system that is not subject to funding uncertainties and vagaries that disrupt travel for the 2 million people who fly every day and impede ongoing modernization projects. We also need an ATC system that enjoys access to a multi-year, predictable source of funding of capital projects. Moreover, the air traffic control workforce deserves a stable funding environment in which they can perform their indispensable services.

**The bill's broad stakeholder governance sets the stage for greater accountability.**

Opponents have suggested this change in governance benefits only the major airlines. That is wrong. Let's be clear: This bill benefits anyone who flies. In any kind of plane. The new entity should be governed by a stakeholder board that would be accountable to all users of the system. To further that fundamental duty, the board of directors themselves should have

<sup>6</sup> MITRE, "CAA International Structures," October 2014, at 7. The MITRE report also notably concluded that "[t]here are no cases where ANSP [Air Navigation Service Provider] separation was reversed and MITRE did not discover any views that the system prior to separation was preferred." *Id.* at 3.

<sup>7</sup> GAO reviewed this longstanding issue in a report issued two months ago. See GAO, "Aviation Finance: Observations of the Effects of Budget Uncertainty on the FAA," Report GAO-16-198R, Publicly Released December 8, 2015, <http://www.gao.gov/products/GAO-16-198R>.

complete fiduciary responsibility to the new ATC non-profit entity and be prohibited from financial or employment ties to any given stakeholder.

**This bill will make NextGen a reality instead of an unrealized dream.** Time has shown that Congress cannot “fix” NextGen through annual appropriations bills, the FAA Reauthorization bill or additional oversight. These measures have not worked and we need to acknowledge that forthrightly. Over the past few decades, Congress has held scores of hearings and directed GAO and the DOT IG to investigate the FAA’s chronically troubled implementation of NextGen. We cannot continue to spend billions of dollars in an environment that does not produce—and shows no promise of producing—the outcomes that Congress has directed and we know that can be achieved.

The GAO has encapsulated the state of affairs with respect to NextGen. It has said that:

“In a review of 30 major ATC acquisition programs, all of which will contribute to the transition to NextGen, GAO found that costs for 11 of the 30 programs have increased from their initial estimates by a total of \$4.2 billion and 15 programs experienced delays. The 11 acquisitions that experienced cost increases account for over 60 percent of FAA’s total acquisition costs (\$11 billion of \$17.7 billion) for the 30 programs. The 15 acquisitions that experienced schedule delays, of which 10 also had cost increases, ranged from 2 months to more than 14 years and averaged 48 months.”<sup>8</sup>

DOT’s IG echoed that description more generally when he said that “since its inception a decade ago, FAA’s progress in implementing NextGen has not met the expectations of Congress and industry stakeholders, and key modernization efforts have experienced significant cost increases and schedule delays.”<sup>9</sup>

We thus know where we are today and it is unacceptable:

- One can simply look at the most recent DOT IG audit of air traffic modernization. It indicates that over the past two decades, Congress has enacted legislation aimed at making the FAA a performance-based organization that would improve air traffic services and expedite modernization.<sup>10</sup> While the FAA has completed several reorganizations and implemented cost-cutting measures, its budget continues to grow significantly while air traffic facility productivity declined.<sup>11</sup> That is a disturbing and unsustainable trend.

<sup>8</sup> GAO, “Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation,” February 2012, GAO-12-223, at 1, <http://www.gao.gov/assets/590/588627.pdf>.

<sup>9</sup> Office of Inspector General, U.S. Department of Transportation, “FAA Made Limited Progress in Implementing NextGen Provisions of the FAA Modernization and Reform Act of 2012,” AV-2014-027, January 28, 2014, at 2, <https://www.oig.dot.gov/library-item/28825>.

<sup>10</sup> Office of Inspector General, U.S. Department of Transportation, “FAA Reforms Have Not Achieved Expected Cost, Efficiency and Modernization Outcomes,” AV-2016-015, January 15, 2016, <https://www.oig.dot.gov/library-item/32908>.

<sup>11</sup> *Id.* at 5.

- The FAA's own numbers tell us that delays and cancellations cost our economy and our customers \$30 billion every year. A 2013 United States Travel Association (USTA) report concluded delays and cancellations drove demand down by 8 percent and prompted passengers to avoid 38 million domestic air trips costing the American economy \$85 billion and 900,000 jobs. This is what the status quo delivers to airline customers.

**Scalability is not a problem.** The shift to the restructured air traffic management system that the bill calls for will not mean that existing resources and facilities will be cast aside and a new system built from scratch. On the contrary, existing assets will be employed. There should be no misunderstanding about that. We will not suffer from a resource "hole" on day one.

Another basic misconception needs to be dispelled. For reasons that we do not understand, some critics of the comparability of the modernization accomplishments of other nations' air traffic management systems and the proposed changeover of the U.S. system cite concerns about the differences in "scalability" or "scale of operations" as reasons why they are incomparable. It is true that the U.S. air traffic control system is the largest and most complex in the world. Those characteristics, however, are not impediments to modernizing it. Instead, the preeminence and sophistication of our system are reasons why we can be confident that we have the wherewithal to handle the transition to a new paradigm and accommodate future growth under it.

**The transition phase.** The transition to a new management and funding arrangement will be hard work. That is to be expected. The success of that transition will depend on thorough preparation that includes the involvement of all users and the commitment of all stakeholders to make the transition successful.

#### CONCLUSION

Change is hard. Ask those who led efforts to deregulate our industry in 1978. Following that work, air travel is now widely accessible, affordable and safer than it has ever been. We can make that kind of sweeping change now for air traffic control. The rest of the developed world has shown us the way.

We know what we have to do. And we know how to do it. We therefore urge Congress to promptly enact the bill.





**STATEMENT OF THE  
NATIONAL BUSINESS AVIATION ASSOCIATION**

**EDWARD BOLEN  
PRESIDENT AND CEO**

**BEFORE**

**THE COMMITTEE ON TRANSPORTATION &  
INFRASTRUCTURE**

**U.S. HOUSE OF REPRESENTATIVES**

**REGARDING**

**"REVIEW OF ATC REFORM PROPOSALS"**

**FEBRUARY 10, 2016**

Chairman Shuster, Ranking Member DeFazio and members of this committee, thank you for inviting me to testify today about the Aviation Innovation, Reform and Reauthorization (AIRR) Act of 2016, or H.R. 4441.

As we all know, aviation is central to our nation's economy and way of life. What we do with FAA reauthorization will have profound implications for all aviation segments. More importantly, it will have implications for all Americans.

There is a great deal at stake in this reauthorization, and it is imperative we get it right.

In discussing H.R. 4441 today, it is appropriate to focus on three key areas: Where our air transportation system is today; where we want it to be in the future; and how best to get from where we are today to where we want to be in the future.

By every objective measure, the United States has the largest, most diverse and safest aviation system anywhere in the world today.

That world leadership is especially pronounced in general aviation. NBAA represents over 10,000 American companies that rely on general aviation aircraft to meet some portion of their transportation challenges. Among the many ways our members use general aviation is to reach multiple locations in a single day, move equipment that may be too big to fit in an overhead bin, or too sensitive to fit in a cargo hold. They also use general aviation to reach thousands of communities not served by scheduled airline service.

Let me give three examples that are illustrative of NBAA's membership:

Manitoba Recycling is a third-generation scrap-metal company in Buffalo, New York. They credit their turboprop airplane with saving their company when they needed to look beyond upstate New York, and the closing manufacturing plants there, for new sources of scrap metal.

Premier Bone and Joint Centers is an orthopedic practice in Laramie, Wyoming. The company uses general aviation airplanes to transport doctors to clinics across the state, so they can provide surgeries for patients in need.

Schweitzer Engineering Laboratories is an employee-owned company in Pullman, Washington, which develops power-grid technologies. Business aviation is often the only way the company can reach the locations associated with energy infrastructure projects.

As you can see from these examples, our members are extremely diverse in terms of their core business, and the locations from which they operate. But, they are all part of a general aviation industry that is largely unique to the United States.

In the U.S., general aviation employs over 1.1 million people and generates over \$200 billion in economic activity. General aviation also spurs economic development in our country's small towns and rural communities. It helps U.S. companies compete in the global marketplace. And, every day, general aviation aircraft transport vital organs, get cancer patients to treatment centers, reunite combat veterans with their families and respond to natural disasters.

This is not something found in other parts of the world. The fact is, nearly three-fourths of all the general aviation operations in the world take place right here in the United States. Unlike in

other countries, general aviation is a fundamental engine in our nation's economy, and a vital link in our transportation system.

But, it is not just in general aviation where the United States is a world leader. The U.S. system is of a size and scope not found anywhere in the world. America is home to eight of the world's 10-largest airports, as measured by number of flights. The system services nearly 25 million flights annually, and there are up to 6,000 flights airborne at peak times in the U.S. airspace system. No other country comes close to those numbers.

While setting the baseline on where we are today is appropriate, the primary focus of FAA reauthorization must be on where we want to be five, 10 and 25 years from now.

At NBAA, we want the United States to continue to be the world leader in all aspects of aviation for decades to come. We believe there are targeted solutions we can include in this FAA reauthorization bill that would ensure that outcome.

Unfortunately, instead of focusing on specific solutions to identified issues that everyone can get behind, this entire debate has been co-opted by the big airlines, which have revived their long-standing efforts to seize control of our nation's air traffic system. We believe the airlines' risky proposal is unlikely to make our system better, and would certainly leave smaller businesses, consumers and communities in a worse situation — not a better one.

Here are some realities about H.R. 4441.

First, America's aviation system is, and will remain, a monopoly. The question on the table is, who will effectively control this monopoly, and for whose benefit? H.R. 4441 would take control of the nation's air traffic system away from the public's elected representatives and give it away, for free, to a board dominated by big airlines.

A careful reading of headlines over the past year provides reason for all Americans to be concerned about turning over our air traffic control system — a natural monopoly — to the big airlines, as proposed in H.R. 4441.

For example, a recent *Washington Post* headline reads, "Justice Department Investigating Potential Airline Price Collusion." A recent *Dallas Morning News* headline reads, "Fees Allow Airlines to Get Away With Skyway Robbery." A recent story in *The Hill* is headlined, "Airline Complaints on the Rise." A *New York Times* story from this past weekend is headlined, "Airlines Reap Record Profits, and Passengers Get Peanuts." And a recent story in *The Wall Street Journal* is headlined, "Airline Consolidation Hits Small Cities Hardest."

Giving the airlines the unbridled power over our air traffic system, as they have long sought, is a dangerous proposition.

Why? Because when the airlines are in charge of our system, and the public's elected representatives are effectively removed from the equation, there will be no means for recourse over the decisions of the board.

This is a breathtaking transfer of authority that will include decisions on everything from access, to airport funding, fees and charges, tower operations, infrastructure and airport investments, all being made by a group dominated by commercial airlines.

It's no wonder that, by a two-to-one majority, the public opposes this idea.<sup>1</sup> Congress should oppose it as well.

Of course, the proponents of this bill talk about "protections" from the worst the airlines could do with their new-found authority. We believe talk about protections is a tacit acknowledgement that serious risks exist. We also believe that over time, the airlines will find their way around any so-called protections.

Another concern we have about H.R. 4441 is that it fails to promote cost savings. The ATC Corporation created in H.R. 4441 appears to be largely based on Canada's air traffic control system. Canada's aviation system handles just a small fraction of the traffic moved through America's system, raising questions of scale. Even a recent report from the Department of Transportation's Inspector General states that there are significant differences between the U.S. system and foreign systems, including Canada's, in terms of operations and financing.<sup>2</sup>

News reports have concluded that the FAA-run system costs \$2.07 per mile, eight cents cheaper than Nav Canada charges.<sup>3</sup> By proposing to model America's system after Canada's, H.R. 4441 is putting consumers on notice that the costs they pay are likely to be going up.

Another example the airlines have trumpeted is the U.K.'s privatized system. In recent years, that system required a financial bailout from taxpayers and government.<sup>4</sup> Under H.R. 4441, something similar could happen in the United States if there is a financial crisis or economic downturn. In such a case, either users will have to pay more or U.S. taxpayers will have to step in and bailout the ATC Corporation.

An additional concern we have about H.R. 4441 is that it has the potential to jeopardize funding stability for the aviation system. In the course of this reauthorization debate, critics of the current system have raised questions about funding predictability for the FAA. But a look at the empirical data shows funding in privatized systems is not, and has not been, more stable and predictable than the FAA's funding.

Yet another troubling aspect of H.R. 4441 is that it raises concerns about preserving access. What makes the U.S. air transportation system so unique and special is that it serves all Americans, in communities large and small. That is very much at risk if we move to an airline-dominated air traffic system. It is reasonable to assume the current focus on serving all Americans will change to just serving those Americans living in large hub cities.

<sup>1</sup> "Voters Overwhelmingly Oppose Privatizing the Air Traffic Control System: Aviation Issues Nationwide Survey Results," Global Strategy Group, September 14, 2015. Available here: <http://www.aviationacrossamerica.com/wp-content/uploads/2015/09/National-Aviation-Issues-Survey-Memo-FINAL.pdf>

<sup>2</sup> "There are significant differences between FAA and foreign countries' processes for operating air navigation systems," Office of the Inspector General, US Department of Transportation. Available here: <https://www.oig.dot.gov/sites/default/files/FAA%20and%20Foreign%20Countries%27%20Processes%20for%20Operating%20Air%20Navigation%20Systems%20Final%20Report%5E9-2-15.pdf>

<sup>3</sup> "Should the US Privatize Air Traffic Control?" Bloomberg, September 11, 2015. Available here: <http://www.bloomberg.com/news/articles/2015-09-11/should-the-u-s-privatize-air-traffic-control>

<sup>4</sup> "Government bails out air traffic service," Daily Mail. Available here: <http://www.dailymail.co.uk/news/article-101269/Government-bails-air-traffic-service.html>

In Canada, the legislation that authorizes Nav Canada as the privatized ATC operator allows service levels to be set without external oversight. The legislation does not prohibit a lower level of service for general aviation operators, and allows Nav Canada to revise its service policies at any time. This setup for Nav Canada is what is being proposed in H.R. 4441.

Here in the United States, the CEO of a major airline recently said the carriers are pushing for the legislation before us "to direct infrastructure improvements into regions of the country where they'll produce the most benefits, like the Northeast corridor."<sup>5</sup> It makes one question what will happen in other parts of the country.

Finally, H.R. 4441 appears to confuse airline control with aviation system modernization. The airlines' push to seize control of the ATC system has been promoted by them as a modernization effort. But the reality is that instead of talking about modernization goals and best business practices for success, we are once again debating the wisdom of turning over the ATC system to a board dominated by the big airlines.

Moving to a system effectively controlled by the airlines is likely to be a major distraction in our efforts to make NextGen a reality, and could represent a step backwards. Consider for example that the airlines have already pushed back their own ADS-B equipage deadline.

Instead of focusing on giving the airlines control, we need a results-driven approach to get us to modernization while ensuring that our air transportation system works for all Americans in communities large and small.

When I began my remarks, I said FAA reauthorization is about where our air transportation system is today; where we want it to be in the future; and how best to get there. Today, the U.S. system is the safest, largest and most diverse in the world. Moreover, it serves Americans in communities large and small. Americans need our nation to continue to be the world leader in all aspects of aviation for decades to come. There are a number of solutions we can act on to make that future a reality.

That includes taking a clear step to ensure funding for the agency's modernization programs. We support measures that leverage our existing excise tax structure, and protect the revenues it generates from sequestration and government shutdowns. We also support bringing more accountability to the agency by fostering best practices from the private sector on accountability, performance, procurement, and personnel, so that promises are met with results. We also support the streamlined certification contained in H.R. 4441. These are among the targeted solutions we can and must implement as part of this FAA reauthorization process.

But, putting the existing air traffic monopoly beyond the reach of the public's elected representatives and giving it to the big airlines is a fatally flawed concept. We urge the Committee not to go down this risky path.

Thank you.

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<sup>5</sup> Statement by Robin Hayes, International Aviation Club, Washington, October 9, 2015.

## THE HILL

### **Don't rush to change air transportation system**

October 27, 2015

By Mayors Joe Gunter, John Manchester, James C. Neilsen IV, Tari Renner and Steve Thorson

A recent editorial in The Hill's Contributors blog (Recent FAA reauthorization was without debate or reform, Oct. 15) unfortunately glazed over some very important points.

First, as your article notes, as part of this debate this year about reauthorizing the Federal Aviation Administration (FAA), some in Congress are proposing some very extensive changes to our air transportation system that will affect businesses, consumers, communities and the American people as a whole. Given that this funding was due to expire on Sept. 30, the U.S. House and Senate reauthorized a six-month extension of this funding to allow time for further debate.

This is a good thing, as we need to ensure the ongoing funding of the operations of our air transportation system. We also need to seriously question any huge, transformational changes to this system, especially when there are some very big questions about how such proposals would impact communities of all sizes around the country.

For example, proposals to privatize our air traffic control system would take this oversight of our system and put it in the hands of a private board that would be influenced and controlled by the biggest commercial airline interests. Currently, Congress and the FAA help to ensure that our nation's air transportation system and air traffic control remains a public benefit that serves communities of all sizes in our country. If the commercial airlines are basically governing themselves, how would consumers and communities have recourse to follow up on noise, airport expansion or closures, or funding issues if they cannot go to their members of Congress?

Most importantly, what would happen to air access to smaller cities and towns in a privatized system? Currently, there are over 5,000 small towns in the U.S. that currently do not have access to commercial air service. What about programs like Essential Air Service? What happens if businesses with

their own aircraft cannot fly to certain airports to visit customers? Or if the airlines, that would control the air traffic control system, can prioritize their own flights, profits and biggest airports that they utilize? The airlines have already cut their routes to smaller cities by over 14 percent in the last 7 years alone.

Right now, there are a lot of questions and calls for huge, sweeping reform and not a lot of answers. On behalf of communities around this country, we need to think long and hard about this type of change to our air transportation system and the impact on communities large and small around our nation.

*Gunter is mayor of Salinas, California; Manchester is mayor of Lewisburg, West Virginia; Neilsen is mayor of Claremont, New Hampshire; Renner is mayor of Bloomington, Illinois; and Thorson is mayor of Watertown, South Dakota.*

<http://thehill.com/blogs/congress-blog/economy-budget/258131-dont-rush-to-change-air-transportation-system>



Canada's Voice For Business Aviation  
La voix de l'aviation d'affaires canadienne

February 2, 2016

Mr. Ed Bolen  
President and CEO  
NBAA

SUBJECT: Privatized ANS

Dear Ed:

It is always good to talk with you regarding privatization of air traffic control services. As we discussed, while NavCanada has, thus far, operated in a manner that largely works for most Canadian business aviation operators, there are major differences between Canada and the United States. As a result, it would be difficult for anyone to assert that adopting the Canadian model would be in the best interests of the United States. While the positive results in Canada speak for themselves in terms of safety, service, technology and efficiency, it is just not an apples to apples comparison, and in fact I do not take a position on this issue.

The United States is unique in the size, complexity and diversity of its general aviation industry including the business aviation segment. What is acceptable in other parts of the world may not work in the United States.

Please know that I am always available to talk with you regarding this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Toering".

Rudy Toering  
President and CEO  
CBAA

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## **Review of ATC Reform Proposals**

Testimony of  
**Robert W. Poole, Jr.**  
Director of Transportation Policy

**Reason Foundation**  
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310-391-2245

**House Committee on Transportation & Infrastructure**  
February 10, 2016

Chairman Shuster, Ranking Member DeFazio, and fellow Members: my name is Robert Poole, Director of Transportation Policy at Reason Foundation, a nonprofit think tank with offices in Los Angeles and Washington, DC. I received my engineering degrees from MIT and began my career in the aerospace industry, before moving into the think tank world.

I have been following the performance of the U.S. air traffic control (ATC) system since the late 1970s, and have written many reports and journal articles on the subject, including for the Transportation Research Board's peer-reviewed journal *Transportation Research Record* as well as *The Journal of Air Traffic Control*. Over the years I have visited corporatized air navigation service providers including Airways New Zealand, NATS, and Nav Canada, and have given presentations at conferences hosted by ATC organizations such as Air Traffic Control Association (ATCA) and the Civil Air Navigation Services Organization (CANSO). I am a member of the GAO's National Aviation Studies Advisory Panel, and during the last several years served on the ATC reform working groups of both the Business Roundtable and the Eno Center.

We are here today because there is a growing consensus that the U.S. air traffic control system is not performing as well as it should. While it remains the world's largest and one of the world's safest, it is "no longer has the most modern equipment, the most efficient airplane routings, or the best technology of any of the world's air traffic control providers." Those are not my words: they are the conclusion of all three former Chief Operating Officers of the FAA's Air Traffic Organization, as well as three former Secretaries of Transportation.<sup>1</sup> We have lost our global leadership position in air traffic control.

The question before Congress is: What is the best approach to reform the provision of air traffic control in the United States? Before I give you my answer, let me provide some context.

### **The Global ATC Corporatization Trend**

In 1987 the government of New Zealand shifted its ATC system out of the transport ministry and converted it into a government-owned corporation, paid directly by its aviation users. This was one of a series of government-wide reforms that included the corporatization of a number of government departments that provided direct services to various customers. The good performance of Airways New Zealand after it was corporatized inspired a wave of similar actions during the 1990s—including the creation of Airservices Australia, Nav Canada, and DFS (in Germany). Airways NZ was also the inspiration for Vice President Gore's reinventing government proposal for U.S. air traffic control, which resulted in legislation to separate our ATC system from the FAA as a government corporation dubbed USA TS—U.S. Air Traffic Services. (Needless to say, that legislation was not enacted.)

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<sup>1</sup> Letter to Chairman Bill Shuster from former federal aviation officials, Feb. 1, 2016

In the decades that followed, more than 60 countries have corporatized their ATC systems, and some of those new air navigation services providers (ANSPs) created an international organization called CANSO—a counterpart of ACI for airports and IATA for airlines. Of the 87 full members of CANSO as of last year, 51 are commercialized, defined as being self-supporting from fees and charges paid directly to them by their customers and regulated at arm's length by the government's air safety regulator. In 2001 ICAO called for the organizational separation of air safety regulation from ATC service provision, to increase transparency and avert conflicts of interest between regulators and providers.

Reviewing the nearly three decades of ATC corporatization, three common features apply to those that are commercialized:

1. Separation of safety regulation from ATC service provision;
2. Self-funding via customer charges, to ensure independence from government budgets; and,
3. Designed to operate as a customer-serving utility.

There are three different organizational forms among those 51 self-supporting ANSPs:

- Government corporation (Airways NZ, Airservices Australia, DFS, etc.)
- Private, for-profit corporation, with rate regulation (NATS)
- Nonprofit user co-op (ARINC, RAMSA, Nav Canada)

Those three alternatives are also found in various public utilities in the United States. In electricity, the for-profit/regulated model is most common, but we also have government utilities (e.g., the Los Angeles Dept. of Water & Power) and many hundreds of electric and telephone user co-ops. These three alternatives offer three different ways to deal with the monopoly status of those utilities. In the case of for-profit companies, external rate regulation is the standard model. Government utilities are presumed (not always accurately) to be operating in the public interest and have no external rate regulation. User co-ops are self-regulated, since the governing board consists of rate-payers and sometimes other stakeholders.

The very first (rudimentary) U.S. air traffic control was provided for several years by an airline user co-op called Aeronautical Radio, Inc. (ARINC). It operated that service until the government's Commerce Department took it over in 1936. ARINC remained in business providing air-ground communications for airlines and developing new avionics. After World War II, it also helped start ATC user co-ops for Cuba (RACSA) and Mexico (RAMSA), both of which were later taken over by their governments. Nav Canada is the largest and most successful ANSP organized as a stakeholder co-op (although it does not use that term).

### **ATC Corporations' Track Record**

There have been about a dozen independent studies of the performance of corporatized ANSPs, during the past decade. The Government Accountability Office carried out a review of five corporatized ANSPs in 2005, finding that after the change, safety either

improved or remained the same; that costs were reduced and efficiency increased, and that investments were made in new technology.<sup>2</sup> The MBS Ottawa study, with support from three universities, compared before/after performance of ANSPs on seven key performance measures, including safety.<sup>3</sup> Across the board, performance was either the same or improved. Academic researchers Oster and Strong published the first book on ATC corporatizations in 2007, generally finding them to be successful and drawing lessons for reform of the U.S. ATC system.<sup>4</sup> The same authors did a report on the potential for U.S. ATC corporatization for the IBM Center for the Business of Government.<sup>5</sup> More recently, the Congressional Research Service provided a good overview of issues involved in ATC corporatization, drawing on the track record from other countries.<sup>6</sup> The MITRE Corporation published an assessment of arm's-length safety regulation of ANSPs in six countries and found that it worked well and that in no case would either the ANSP or the safety regulator want to return to the prior situation.<sup>7</sup> And a second book-length study, which also found positive results from corporatization, was published in 2015.<sup>8</sup>

### The U.S. ATC Problem

Broadly speaking, the problem facing the FAA's Air Traffic Organization is three-fold: inadequate and uncertain funding, a flawed governance model, and a status-quo-oriented organizational culture. These problems are inter-related, and in my study commissioned by the Hudson Institute, I concluded that the most serious underlying problem is the organizational culture.<sup>9</sup> In that study, I compared the performance of the ATO and corporatized ANSPs in dealing with seven disruptive ATC innovations. In each case, the other ANSPs had acted far more like high-tech service businesses than our own ATO.

The question I then set out to answer was "why." Reviewing the case studies and interviewing ATC experts within and outside of the ATO, I identified five reasons for the ATO's status-quo culture:

1. Self-identity as a safety agency rather than as a business serving customers;

<sup>2</sup> Government Accountability Office, "Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from their Commercialization," GAO-05-769, July 29, 2005

<sup>3</sup> MBS Ottawa, Inc., *Air Traffic Control Commercialization: Has It Been Effective?*, January 2006 ([www.mbsottawa.com](http://www.mbsottawa.com))

<sup>4</sup> Clinton V. Oster and John S. Strong, *Managing the Skies: Public Policy, Organization, and Financing of Air Traffic Management*, Ashgate Publishing, 2007

<sup>5</sup> Clinton V. Oster and John S. Strong, "Reforming the Federal Aviation Administration: Lessons from Canada and the United Kingdom," IBM Center for the Business of Government, 2006

<sup>6</sup> Bart Elias, "Air Traffic Inc.: Considerations Regarding Corporatization of Air Traffic Control," Congressional Research Service, CRS 7-5700, R43844, January 5, 2015

<sup>7</sup> Dan Brown, Tom Berry, Steve Welman, and E. J. Spear, "CAA International Structures," MITRE Corporation, October 2014

<sup>8</sup> Rui Neiva, *Institutional Reform of Air Navigation Service Providers: A Historical and Economic Perspective*, Edward Elgar Publishing, 2015

<sup>9</sup> Robert W. Poole, Jr., "Organization and Innovation in Air Traffic Control," Hudson Institute, January 2014 ([http://reason.org/files/air\\_traffic\\_control\\_organization\\_innovation.pdf](http://reason.org/files/air_traffic_control_organization_innovation.pdf))

2. Insufficient technology expertise;
3. Inadequate management expertise;
4. Excessive (but well-meaning) oversight—the “too many cooks” problem; and,
5. Lack of customer focus (i.e., seeking to please Congress more than its aviation customers).

All five factors were verified by an extensive set of peer reviewers convened by the Hudson Institute to review the draft of this report.

I concluded that the keys to fixing these problems were the following:

- Separate safety regulation from ATC service provision, to permit a technology-innovation culture to develop in the new ANSP, constrained of course by arm’s-length safety regulation.
- Change the funding system to that of airports and other public utilities, in which the customers pay the provider directly for using the infrastructure. This provides enough resources and the flexibility to recruit and retain top-notch technologists and program managers, as well as the ability to issue revenue bonds for large-scale modernization efforts, as airports and public utilities do.
- Shift the governance model from numerous outside overseers to a core group of stakeholders—those who use the ATC system (aircraft operators and passengers) as well as those who make it run (management and controllers).

These three features are best represented by the user co-op model of corporatization, of which our best example is Nav Canada.

### **Evaluating the Reform Proposals**

This committee is faced with two reform proposals. One proposal, from Chairman Shuster, is to convert the FAA’s Air Traffic Organization into a federally chartered, nonprofit, self-funded ANSP with a stakeholder board. Ranking Member DeFazio’s alternative would exempt the Trust Fund from sequestration and annual appropriations, as well as mandating further FAA procurement and personnel reforms. While these reforms are well-intended, experience suggests they will not do the job.

The ATC Corporation proposal meets all three of the criteria outlined above, and is consistent with global ATC best practice as it has evolved over the last three decades. For reasons I have explained, it would address all three problems plaguing the Air Traffic Organization: funding, governance, and culture.

The DeFazio alternative, by contrast, would keep air traffic control and air safety regulation within the same organization. There are several problems with doing this:

- It is contrary to ICAO principles set forth in 2001 and now adhered to by nearly all developed countries;
- It retains the current conflict of interest between regulation and service provision, which should be at arm’s-length from one another; and,

- It reinforces the identity of the ATO as part of a safety agency, rather than as a service delivery entity with external safety oversight, which leaves the status-quo organizational culture problem un-addressed.

A second problem concerns the funding change. The ATC Corporation would be paid for directly by its customers, like other utilities. That would create a customer/provider nexus that refocuses the organization's attention on serving its aviation customers. By contrast, the DeFazio alternative would retain funding via excise taxes paid to the government and parceled out to the ATO from the Trust Fund. Since these funds would still be federal tax money, all the existing federal oversight would remain, since the funds would still be *taxpayers'* money. The current set of ATC overseers includes OMB, GAO, the DOT Inspector General, the FAA Administrator, the DOT Secretary, and 535 Members of Congress. No one can manage a high-tech service business in the interest of its customers while having to report to that many overseers. Moreover, major investments in the ATC system would still have to be paid for out of annual cash flow, rather than using long-term financing via the bond market, as corporatized ANSPs (and U.S. airports) do.

Finally, I am dubious about further attempts at personnel and procurement reform, after reading two decades of GAO and Inspector General reports on the failure of previous efforts along these lines. We know that previous reforms of this kind have failed to address the underlying culture problem, while we have seen the transformation in country after country of former inwardly focused transport bureaucracies into customer-focused ATC service business. My engineering training tells me to go with what has been demonstrated to work, not with what has been demonstrated to fail.

### Closing Comments

There are several factors that make the United States unique among countries when it comes to air traffic control. It has by far the largest airspace jurisdiction and the highest level of flight activity, both commercial and non-commercial. It has a larger and more-diversified general aviation community than any other country, which is valuable not only for recreation but for providing transportation access to numerous rural areas and small towns not served by commercial airlines. The United States also has the world's largest aerospace and avionics industries, with potential that is likely not fully tapped on a global basis, because our ATC system has lagged behind others in modernization.

These factors all need to be taken into account in considering corporatization. In terms of scale, two points are not fully appreciated. First, the ATO's current system is *already at the scale needed* for our vast airspace and high levels of flight activity. Changing the funding and governance of the ATO is not creating a new ATC system from scratch; it is simply providing a better way to pay for and manage *the system that already exists*. Second, there are significant economies of scale in ATC, such that the airspace with the highest level of flight activity can spread fixed costs over a larger customer base, meaning lower unit costs. The current ATO's productivity level is above average, but that of Nav Canada is significantly higher, despite Nav Canada's smaller airspace and much

lower overall flight activity. This suggests that better funding and management could and should lead to lower unit costs, thanks to increased productivity.

Any transformation of the ATO must also take seriously the valuable roles played by business and commercial aviation. Imposing significantly higher costs on those users, or not including them as stakeholders in the governance model, would be very ill-advised.

The promise of NextGen has yet to be realized in terms of significant improvements in routings, time saving, fuel savings, better performance despite bad weather, etc. To be sure, the NextGen Advisory Committee has demonstrated that a diverse group of stakeholders can work together to set near-term priorities. But the context for NAC's activities has been the need to perform *triage*—to decide which few bits and pieces of NextGen can be implemented given recent years' reductions in capital investment budgets, stop-and-start funding, mismatches in the timing of ATC system investments and aircraft equipage, etc. A self-funded ANSP focused on meeting its customers' needs offers the best hope of faster implementation of all those elements of NextGen that truly have sound business cases.

My assessment is that the ATC Corporation proposal meets these tests. It provides for arm's-length safety regulation, making possible the development of an innovative corporate culture. It would free the ATO from the constraints of the federal budget, with a reliable and bondable revenue stream at a level that makes sense from both an operations and a capital modernization standpoint. It provides for a carefully balanced governing board of aviation stakeholders, enabling serious focus on serving its aviation customers. It provides strong protections for current and future employees. It would exempt—by statute—direct user fees for piston GA and non-commercial turbine aircraft. It provides an appeal process for fees that a user considers unwarranted. And it includes mandates for continued access to the national airspace system for rural areas and small communities.

What impresses me most of all is who has declared in favor of this reform—aviation professionals who know the system inside and out. That includes the controllers and it includes all three former Chief Operating Officers of the ATO. Each of them tried very hard to run the ATO like a business. And each concluded that this was simply not possible given the constraints of being trapped inside a large, tax-funded bureaucracy. I take their judgments very seriously, and I hope you will, too.

This concludes my testimony. I will be happy to answer questions.

*Postscript:*

The late Glen A. Gilbert is remembered as the “father of air traffic control.” He helped set up the first ARINC centers, as an American Airlines employee in the mid-1930s. When the government took over ATC, Gilbert became its first controller, and remained there for most of his career. In retirement in the late 1960s, Gilbert proposed that the ATC system be separated from the FAA and converted into a federally chartered

nonprofit corporation similar to Comsat.<sup>10</sup> So the idea of an ATC Corporation has a longer pedigree than many people realize.

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<sup>10</sup> Glen A. Gilbert, "Gilbert Offers ATC Master Plan," *American Aviation*, Dec. 23, 1968.



February 1, 2016

The Honorable Bill Shuster  
Chairman  
Committee on Transportation and Infrastructure  
2251 Rayburn House Office Building  
Washington D.C. 20515

Dear Chairman Shuster,

As former federal government officials and policymakers, we are writing to urge bipartisan support for transformational change of our nation's air traffic control system. While the U.S. air traffic control system is the world's largest and safest, we need bold action now to address the fact that our air traffic infrastructure and technology are falling behind.

Attempts to reform our air traffic control system have been made under both Democratic and Republican Administrations. In fact, during the Clinton Administration it was proposed as part of reinventing government. This is not about politics, it is about policy.

There was a time when the United States was the gold standard in every aspect of air traffic control. Those days of global leadership, regrettably, are gone. The U.S. no longer has the most modern equipment, the most efficient airplane routings or the best technology of any of the world's air traffic control providers. Further, the accumulated effects of budget unpredictability and a bureaucratic organizational structure have slowed progress on implementing next-generation technologies and inhibited our ability to properly staff facilities and procure the best equipment for our nation's air traffic controllers.

The FAA's largest and most essential facilities are more than 50 years old and much of the technology housed within them dates back almost that far. All of this means that travelers suffer longer flight times, more numerous departure delays and higher cancellation rates—and have access to fewer airports. All stakeholders including commercial, business and general aviation operators, passengers and labor have been negatively impacted by the stops and starts of the federal budget process. Our nation's air traffic control system should not be treated like a political football and subjected to the vagaries of the annual budgeting process. In addition, the ATC service provider should be regulated at arms-length by the FAA, just as air carriers, aircraft and engine manufacturers, and all other components of the aviation system are regulated by the FAA.

- MORE -

We need a reliable, robust 21<sup>st</sup> century system that ensures access for all users—preserving and expanding services for all communities, large and small. We urge Congress to take action to preserve the FAA’s safety oversight of air traffic control while moving the operation and funding of air traffic control to a federally chartered, non-profit organization that would be governed and funded by the stakeholders and users of our nation’s aviation system. Only by taking this step will the United States be able to regain its global leadership and preserve the safety and efficiency that our citizens have enjoyed for so many years.

Sincerely,

The Honorable Byron L. Dorgan\*  
U.S. Senator for North Dakota, 1992-2010

The Honorable Trent Lott\*  
U.S. Senator for Mississippi, 1989-2007

The Honorable James H. Burnley, IV\*  
Secretary of Transportation, 1987-1989

The Honorable Norman Y. Mineta  
Secretary of Transportation, 2001-2006

The Honorable Mary Peters  
Secretary of Transportation, 2006-2009

The Honorable J. Randolph Babbitt\*  
FAA Administrator, 2009-2011

Russell G. Chew  
FAA Chief Operating Officer, 2003-2007

David Grizzle  
FAA Chief Operating Officer, 2011-2013

Henry P. “Hank” Krakowski  
FAA Chief Operating Officer, 2007-2011

Dorothy Robyn  
White House National Economic Council  
Special Assistant, 1993-2001

\* Messrs. Burnley, Dorgan, Lott and Babbitt currently serve as advisers to the airline industry.



LETTERS

## An Open Letter to Congress: It's Time to Modernize Air Traffic Control

by Pete Sepp / February 8, 2016

Dear Member of Congress:

As Congress prepares to craft a comprehensive FAA reauthorization package, lawmakers should explore every option to improve the nation's aviation infrastructure without burdening taxpayers. One such option is House Transportation and Infrastructure Committee Chairman Shuster's vision for air traffic control reform, which he has described as "a federally chartered, fully independent, not-for-profit corporation to operate and modernize the ATC system." We, the undersigned, believe that Chairman Shuster's framework is an excellent foundation upon which to build a new model for an operation historically mired in old-style thinking and fiscal ineptitude.

Last month, the Federal Aviation Administration's Inspector General (IG) provided the latest in a decades-long string of warnings that the agency is not performing the transformational tasks Congress has repeatedly given it, the largest of which is the NextGen project to build a 21st century air traffic control network. Well into that century, NextGen remains a distant goal, despite the facts that FAA's budget nearly doubled between 1996 and 2012, personnel levels were constant, and productivity dropped. The IG reported that eight of FAA's 15 recent major system acquisitions were over-budget by a total of \$3.8 billion, while eight were behind schedule by an average of more than four years. These chronic breakdowns indicate FAA is fundamentally incapable of managing change. A better approach is needed now.

To us it is an axiomatic economic principle that user-funded, user-accountable entities are far more capable of delivering innovation and timely improvements in a cost-effective manner than government agencies. By drawing upon the positive experiences of dozens of nations that have freed their air traffic control enterprises from the stifling grip of bureaucracies, Chairman Shuster's

5/17/2016

National Taxpayers Union - An Open Letter to Congress: It's Time to Modernize Air Traffic Control

framework has much greater promise of fulfilling the objectives of NextGen. If this framework is properly developed into legislation and implemented, consumers will experience fewer travel delays, the movement of goods will become more efficient, aircraft will burn less fuel, air safety margins will increase, capacity will expand, responsiveness and transparency will improve, political micromanagement will recede, costs will be easier to control and sustain, and the economy could experience tens of billions of dollars in growth.

Defenders of the status quo have conjured up apparitions of doom over Chairman Shuster's outline as if it were completely set in legislative stone. In truth, most of them are opposed to any meaningful conversation over shifting the direction of air traffic control policy. They claim that the plan is "privatization," when in fact the proposal calls for a nonprofit entity. They assert that the general aviation community would be disadvantaged, even though the independent organization would include all stakeholders and customers of the system, from labor unions to airlines to piston-engine pilots. In any case, user charges for piston and non-commercial turbine aircraft would be waived. They contend that a nonprofit arrangement would be an unconstitutional delegation of Washington's authority over air traffic control, even though a private-contractor tower program has existed for 30 years. This inconvenient reality aside, regulating safety – including that of the air traffic control system – would remain an inherently governmental function in FAA's hands. Indeed, clarifying this mission could actually sharpen FAA's focus on maintaining America's aviation safety record.

Still other opponents of reform claim that a user-funded air traffic control system will be less accountable to consumers than the current tax-funded regime that depends upon annual appropriations. Such an assertion is bizarre on its face to the millions of travelers who have seen the effective tax and fee rate on a typical airline ticket zoom past 20 percent, with precious little improvement to show for their hard-earned money. A redesigned structure would lighten this onerous load.

We hold many different views on U.S. aviation policy and potential responses from Congress. However, all of us agree the time is long overdue to move our nation's air traffic control system toward proven, user-based solutions that will allow America to remain competitive in the skies. The circumstances for doing so have never been more favorable ... and the need has never been more urgent.

Sincerely,

5/17/2016

National Taxpayers Union - An Open Letter to Congress: It's Time to Modernize Air Traffic Control

*Pete Sepp, President  
National Taxpayers Union*

*R. Richard Geddes\*  
American Enterprise Institute and Cornell University*

*Andrew F. Quinlan, President  
Center for Freedom and Prosperity*

*Jonathan Bydlak, President  
Coalition to Reduce Spending*

*Marc Scribner, Fellow  
Competitive Enterprise Institute*

*Tom Schatz, President  
Council for Citizens Against Government Waste*

*Chris DeMuth, Distinguished Fellow\*  
Hudson Institute*

*Seton Motley, President  
Less Government*

*Brian Williams, Legislative Director  
National Center for Policy Analysis*

*Bob Poole, Director of Transportation Policy\*  
Reason Foundation*

*Paul Gessing, President  
Rio Grande Foundation*

*Eli Lehrer, President\*  
The R Street Institute*

*Stephen Ellis, Vice President  
Taxpayers for Common Sense*

\*Organization listed for identification purposes only.

Dear Brothers and Sisters,

At 11:30 a.m. EST today, House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA-9) will unveil an FAA reauthorization bill at a press conference on Capitol Hill. NATCA received a copy of the bill and has given its language a complete and very rigorous review. We have looked at every single word and pored over every detail and proposal. We have specifically focused on what protects our members' rights, pay, benefits, and retirement, and what ensures the safety of the National Airspace System (NAS) while also addressing the current problem of providing a stable and predictable funding stream to operate and improve a 24/7 safety function.

After extremely careful review, consideration, and deliberation, we have reached a decision: NATCA supports this bill.

We applaud the very hard work that the Committee has done to think outside the box and come up with a comprehensive bill that addresses the concerns we have shared with them. While the legislation currently addresses NATCA's primary issues of concern, we want to emphasize that today is only the beginning stage of the legislative process.

Part of that process will soon include a proposal by Committee Ranking Member Peter DeFazio (D-OR-4). The Ranking Member will propose an alternate model for ensuring a stable, predictable funding stream for the FAA, while at the same time protecting employees and ensuring the safety of the NAS. We appreciate the effort he and his staff have made and look forward to giving that proposal's language the same complete and rigorous review.

We want to assure you that we treat this decision with extraordinary care and precision. In reviewing this bill, we found that it is in alignment with all of our organization's policies, practices, and principles. We made sure that we could clearly see how this bill will protect the NAS and allow it to continue to grow.

Last year, we told you – and stated publicly – that any proposed restructuring of the FAA and its funding mechanism through FAA reauthorization legislation must achieve these four things:

1. Safety and efficiency must remain the top priorities;
2. Stable, predictable funding must adequately support air traffic control services, staffing, hiring and training, long-term modernization projects, preventative maintenance, and ongoing modernization to the physical infrastructure;
3. Robust and continued growth of the aviation system is ensured; and
4. A dynamic aviation system that continues to provide services to all segments of the aviation community, from commercial passenger carriers and cargo haulers, to business jets, to general aviation, from the major airports to those in rural America.

We can tell you that this bill achieves each of these four things.

This legislation proposes a federally-chartered, not-for-profit corporation to operate the NAS. We want to be very clear on this point: this is NOT a for-profit model. As we've

said throughout this process, that would be something we would oppose. Many voices in the public discussion of this issue, including the news media, will continue to use the word privatization to describe this bill. But to us, privatization has always meant a profit motive where safety is not the top priority. That definition does NOT fit this bill today. We support this bill because it does make safety the top priority.

It is equally important that any proposed change does not harm our members. After carefully looking at the language, this bill does protect our workforce - including your pay, benefits, retirement, and collective bargaining rights. If this bill, as written today, becomes law, employees will be kept whole.

Finally, we want to reiterate that this bill is just one step in the lawmaking process. As you all know, language in proposed legislation is often changed or amended at various points throughout the legislative process. We will continue to vigorously and carefully review this legislation at all times and push for its improvement. If at any time there are changes to this bill, we will immediately examine them to ensure the bill continues to align with our organization's policies, practices, and principles. We reserve the right to withhold our support if any changes cause the bill to violate our principles.

We will continue to keep you informed on all developments as this process unfolds.

In solidarity,

Paul Rinaldi  
President

Trish Gilbert  
Executive Vice President



**Antony Tyler**  
Director General & CEO

9 February 2016

The Honorable Bill Shuster, Chairman  
U.S. House Committee on Transportation  
and Infrastructure  
2165 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank LoBiondo, Chair  
U.S. House Committee on Transportation  
and Infrastructure  
Subcommittee on Aviation  
2251 Rayburn House Office Building  
Washington, DC 20515

The Honorable Peter DeFazio, Ranking Member  
U.S. House Committee on Transportation  
and Infrastructure  
2163 Rayburn House Office Building  
Washington, DC 20515

The Honorable Rick Larsen, Ranking Member  
U.S. House Committee on Transportation  
and Infrastructure  
Subcommittee on Aviation  
2251 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Shuster, Ranking Member DeFazio, Chairman LoBiondo, and Ranking Member Larsen:

On behalf of the International Air Transport Association (IATA), I am writing to express our support for the Committee's effort to modernize the U.S. air traffic control (ATC) system through the creation of an independent, corporatized non-profit entity to perform ATC services.<sup>1</sup>

A modernized and efficient U.S. ATC system is critical to the future growth of global commercial aviation. We recognize that the decision to move from a government agency to a corporatized entity should not be taken lightly. However, after more than 20 years of debate in the United States and after similar (and successful) modernization efforts around the world, we believe that now is the time to move forward with this historic transformation. The arguments are clear:

- **Safety:** Safety will always be the highest priority for IATA and its member airlines. We are confident that the corporatized ATC will maintain the laudable safety record achieved by the FAA. In fact, we believe that the separation of the operator and regulator of air traffic services, a concept endorsed by the International Civil Aviation Organization, will clarify the FAA's regulatory oversight of ATC and further enhance the safety of this already safe system.

/s/

<sup>1</sup> Delta Airlines does not support the content of this letter

International Air Transport Association

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- **Efficiency:** The structure offers the opportunity to manage the airspace in a more rational and efficient manner than can be achieved with today's structure. The experience of our members suggests that corporatized ATCs offer the opportunity of reduced ATC operating costs.
- **Budgetary certainty:** The unpredictable Congressional budget process essentially guarantees continued delays in NextGen and future ATC modernization efforts. The new model will allow for budgetary certainty as well as access to capital markets for much needed investments in growth.

We look forward to supporting the Committee on this historic initiative.

Yours sincerely,



cc: Members of the House Transportation and Infrastructure Committee

## ATC Modernization Would Move U.S. Into 21st Century

Feb 3, 2016

**Washington** – [Business Roundtable](#) today welcomed the inclusion of an air traffic control (ATC) modernization provision as part of the Federal Aviation Administration (FAA) reauthorization bill, which was introduced by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA).

"Business Roundtable applauds Chairman Shuster for his leadership on the important issue of how best to manage the modernization of air traffic control in the United States," said Business Roundtable President John Engler. "America deserves an air traffic control system that maintains U.S. global leadership in safety and leverages the much-needed advantages of modern technology. Chairman Shuster's bill would create a system that delivers on that promise."

Under the provisions of the bill, the federal government would charter a non-profit organization to manage air traffic control in the United States. The new organization would be able to efficiently adopt new technologies and increase system capacity. The FAA would continue to oversee aviation safety.

"During the past year of hearings and deliberations, stakeholders have gone on the record to express their concern that the status quo for our ATC system is unacceptable," Engler continued. "Now is the moment to move forward into the 21st century and harness the full benefits of NextGen technologies, while improving operational safety and efficiency. Business leaders stand ready to work with Chairman Shuster and members of the House Transportation and Infrastructure Committee to advance this legislation."

The non-profit organization would be supported by a fair funding system based on the cost of ATC services and would have access to capital markets to finance its growth. It would also benefit from a governance and management structure that ensures NextGen technologies are delivered in a timely manner – with stakeholder and employee involvement.

In 2016, Business Roundtable will focus on policies that lead to job creation and economic growth – national priorities that are inextricably linked. Our priorities reflect our collective business experience as CEOs of America's leading companies, experience that tells us what it takes to build economic momentum for the United States in 2016 and beyond. To learn more about solutions to create jobs and grow the U.S. economy, visit [www.businessroundtable.org/growth](http://www.businessroundtable.org/growth).



## P R E S S   R E L E A S E

SOUTHWEST AIRLINES PILOTS' ASSOCIATION

SWAPA.ORG  
 Brookview Plaza 1450 Empire Centre Suite 737  
 Dallas, TX 75247 800.969.7972

FOR IMMEDIATE RELEASE  
 February 25, 2016

CONTACT: Neal Hanks  
 Director of Communications  
 214.722.4209, [nhanks@swapa.org](mailto:nhanks@swapa.org)

**SWAPA Urges House Passage of AIRR Act**

*Pilots of Southwest Airlines support legislation to modernize FAA, improve aviation safety and efficiency*

DALLAS – On behalf of the more than 8,000 pilots of Southwest Airlines, Captain Jon Weak, President of the Southwest Airlines Pilots' Association (SWAPA), expressed his support today for H.R. 4441, the Aviation, Innovation, Reform and Reauthorization (AIRR) Act.

Statement to be attributed to SWAPA President, Captain Jon Weak:

*"For too long, the delays in upgrading our air traffic control technology have led to costly delays for passengers on the ground. As passed by the Committee, the AIRR Act will take bold and significant steps to separate the FAA's air traffic controllers from the federal bureaucracy that has deprived them of the tools necessary to best do their job. Freeing ATC from the FAA will allow the Agency to concentrate on its core mission of safety. At the same time, the new ATC board laid out by the legislation will include a balance of interests from every segment of aviation, including pilot labor, which will focus on modernization and efficiency of the system. Importantly, under the AIRR Act, our air traffic controllers will continue to be the best of the best, but will do so with access to equipment and working conditions that once again lead the world.*

*The AIRR Act guides us towards modernization while taking essential steps to increase safety. Importantly, the AIRR Act includes a provision important to the aircraft mechanics of Southwest Airlines to provide greater oversight and accountability of foreign repair station employees. Additionally, the AIRR Act will promote harmonization with the international community on the shipment and storage of lithium-ion batteries, require risk assessment to address cockpit safety, and will include new science-based rest and duty rules for flight attendants. Specifically, SWAPA appreciates the efforts of Representative Bob Gibbs to pass an amendment to ensure the ATC board created by the bill will include a balanced voice for pilot labor.*

*While we endorse this legislation, SWAPA would like to see additional improvements to the AIRR Act to ensure that all pilots with access to the National Airspace System are healthy and fit for duty. In particular, SWAPA would encourage the adoption of an amendment offered and withdrawn during committee markup by Rep. Ryan Costello to create an Aviation Rulemaking Committee to address Part 135 pilot rest and duty rules. In addition, SWAPA supports inclusion of bipartisan legislation championed by Senators Jim Inhofe and Joe Manchin, and passed by the Senate Commerce Committee as a Manchin amendment in November, to reform third-class pilot medical certification.*

*The professional pilots of SWAPA are grateful for the efforts of the bipartisan House Transportation Committee leadership to improve this important legislation throughout Committee consideration. We look forward to working with Chairmen Shuster and Lofgren as well as Ranking Members DeFazio and Larsen to further improve this legislation as it continues through the legislative process."*

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 Located in Dallas, Texas, the Southwest Airlines Pilots' Association (SWAPA) is a non-profit employee organization representing the more than 8,000 pilots of Southwest Airlines. SWAPA works to provide a secure and rewarding career for Southwest pilots and their families through negotiating contracts, defending contractual rights and actively promoting professionalism and safety. For more information on the Southwest Airlines Pilots' Association, visit [www.swapa.org](http://www.swapa.org). # # #

**FOR IMMEDIATE RELEASE**

**CONTACT:**

Captain Dennis Tajer  
847-902-8481  
Gregg Overman  
817-302-2250/817-312-3901

**ALLIED PILOTS ASSOCIATION ENDORSES AIRR ACT**

FORT WORTH, Texas (March 3, 2016) — On behalf of the approximately 15,000 pilots of American Airlines, Captain Keith Wilson, President of the Allied Pilots Association (APA), joins the presidents of the National Air Traffic Controllers Association and the Southwest Airlines Pilots' Association in calling for passage of the Aviation, Innovation, Reform and Reauthorization (AIRR) Act.

According to Captain Wilson:

“For decades, we have watched valuable taxpayer-supported resources used in well-intended efforts to modernize the FAA and the Air Traffic Control system, only to have those efforts thwarted or become obsolete at implementation due to the vagaries and inefficiencies of the federal funding mechanism. Separating the regulated from the regulators, while simultaneously providing a predictable and reliable revenue stream, will allow the U.S. National Airspace System to retain its enviable safety and efficiency record, and equip and train its Air Traffic Controllers to handle the challenges of the coming century, retaining the United States' role in global aviation as the gold standard. Additionally, APA is pleased with the passage of Representative Bob Gibbs' amendment that assures a balanced pilot voice in future ATC governance.

“The AIRR Act also addresses a variety of important safety issues, such as accountability and oversight of foreign repair station employees, risk assessment requirements on cockpit safety regulations, harmonization with a global standard of recent guidance to severely constrain the carriage of lithium-ion batteries on passenger aircraft and so on.

“APA, however, notes that there is still work to be done, and the bill is a ways from passage and may not be in its final form. APA would like to see one level of safety in the arena of fatigue, flight and duty time, to include cargo and Part 135 operations. APA has previously applauded the Senate legislation introduced by Senators Jim Inhofe

and Joe Manchin ('the Manchin Amendment') reforming third-class medical certification.

"Finally, APA looks forward to continuing its work with House Transportation & Infrastructure Committee Chairman Bill Shuster, Ranking Member Peter DeFazio, Aviation Subcommittee Chairman Frank LoBiondo and Ranking Member Rick Larsen in their bipartisan efforts to reauthorize and modernize the FAA."

*Founded in 1963, the Allied Pilots Association — the largest independent pilots union in the United States — is headquartered in Fort Worth, Texas. APA represents the 15,000 pilots of American Airlines, including several hundred pilots on full-time military leave of absence serving in the armed forces. The union's website is [www.alliedpilots.org](http://www.alliedpilots.org). American Airlines is the world's largest passenger airline.*

###

NetJets Inc.  
4111 Bridgeway Avenue  
Columbus, OH 43219

NETJETS

February 10, 2016

The Honorable Bill Shuster Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington DC 20515

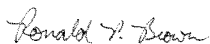
Dear Chairman Shuster:

We are writing to express NetJets Inc.'s support for the "Aviation Innovation, Reform, and Reauthorization Act," H.R. 4441, that you introduced in Congress last week. As you may know, our NetJets family of companies manages over 600 business jet aircraft in the United States alone, through a mixture of fractionally owned and wholly owned private aviation programs. We and our customers have a compelling interest in this Reauthorization.

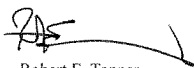
We believe that H.R. 4441 is a significant step in a new direction that will enable the aviation industry to embrace safety and efficiency.

We welcome the opportunity to work further with you, Rep. LoBiondo, Chairman of the Aviation Subcommittee, other members of Congress, the FAA, and other industry leaders as the details of the FAA Reauthorization bill are debated and drafted.

Thank you,



Ronald P. Brower  
Corporate Secretary



Robert E. Tanner  
Vice President, Corporate & Government Affairs



Representative Bill Shuster  
Chairman, Transportation and Infrastructure Committee  
United States House of Representatives  
2268 Rayburn HOB  
Washington, D.C. 20515

Representative Peter DeFazio  
Ranking Member, Transportation and Infrastructure Committee  
United States House of Representatives  
2134 Rayburn Office Building  
Washington, DC 20515

February 8, 2016

Dear Chairman Shuster and Ranking Member DeFazio:

The Logistics Supply Chain Coalition (LSCC) writes to congratulate and commend the Transportation and Infrastructure Committee on its proposed bill, the Federal Aviation Administration Reauthorization: Enabling a 21st Century Aviation System.

The LSCC is a coalition comprised of 30+ member companies and 200+ individuals who advocate on behalf of small to mid-sized shippers, warehouseers, and freight forwarders. The LSCC's purpose is to empower these companies by providing the tools necessary to take critical action that will protect and promote their unique and specific interests in commerce.

The proposed bill clearly demonstrates a thoughtful approach to balancing the needs of the diverse industries that operate under the jurisdiction of the Federal Aviation Administration (FAA), particularly air cargo. The LSCC further believes that this bill balances the concerns of supply chain and transportation companies of all sizes.

However, the LSCC is concerned about the potential for modifications to the bill that would impede commerce and prevent the rapid deployment of cargo within the United States and abroad. Thus, the LSCC offers itself and its members as a resource to the Transportation and Infrastructure Committee to provide sound guidance on any subsequent modifications to the bill that will affect small to mid-sized members of the supply chain.

Accordingly, we urge swift adoption of the bill's text to move both industry and the country forward.

Respectfully,  
Logistics Supply Chain Coalition



# WEBmemo

February 9, 2016

No. 35

## Air Traffic Control Reform: Frequently Asked Questions

The Aviation Innovation, Reform, and Reauthorization Act Offers Opportunity for Needed Modernization

By Marc Scribner\*

The air traffic control reforms contained in the Aviation Innovation, Reform, and Reauthorization (AIRR) Act (H.R. 4441), recently introduced by the chairman of the Committee on Transportation and Infrastructure, Rep. Bill Shuster (R-Pa.), comprise the most significant aviation reform since the Airline Deregulation Act of 1978. The AIRR Act offers a unique opportunity to implement a badly needed modernization of America's air traffic control system. Congress and the administration should seize it.

The United States is the last developed country in the world to provide air navigation services via its national aviation safety regulator. Others have at the very least separated air traffic control into an independent government agency, while many have opted for transferring duties to nonprofit corporations. There is even one rate-regulated, for-profit, air navigation service provider in the United Kingdom.

To date, one of the most successful models is offered by Nav Canada, a nonprofit corporation created in 1995 that took control of Canada's air traffic control system the following year.<sup>1</sup> The ATC Corporation that would be created by the AIRR Act is modeled on Nav Canada.

As one would expect, there are many questions on this important policy proposal and below are some answers to frequently asked questions about air traffic control corporatization.

**What is the problem with the status quo?** Years of delay and billions of dollars in cost overruns have plagued the Federal Aviation Administration's (FAA) failed attempts to modernize air traffic control. Currently, U.S. air traffic control is provided by the FAA's Air Traffic Organization, which still relies on technologies and facilities created in the 1960s. This failure threatens to severely limit the growth of air travel over the coming decades. That in turn will lead to increased air traffic congestion, more flight delays and cancellations, wasted fuel, higher air fares, and lost economic activity.

The FAA has been attempting to implement a much-needed 21<sup>st</sup> century modernization, known as the Next Generation Air Transportation System, or NextGen, with little success and massive cost overruns since 2003.<sup>2</sup> NextGen aims to harness new technologies and

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modern practices, especially shifting from ground-based radar flight surveillance to a satellite-based GPS surveillance system, which would greatly increase system efficiency.

In 2012, the Government Accountability Office found that half of the 30 core NextGen components were delayed and 11 suffered cost overruns totaling \$4.2 billion.<sup>3</sup> A comprehensive review conducted by the National Research Council of the National Academies released in April 2015 harshly criticized the FAA's attempts at NextGen implementation, charging that "'NextGen' has become a misnomer."<sup>4</sup> Multiple reports released in 2015 and 2016 by the Department of Transportation's Office of Inspector General confirm that the longstanding bureaucratic problems at the FAA means the agency is likely unable to modernize air traffic control and that ongoing attempts to do so will result in significant costs.<sup>5</sup>

The need for reform cannot be overstated. The United States is the last large developed country to have not separated air traffic control from its aviation safety regulator. The FAA is a safety regulator, but it sees the Air Traffic Organization as an extension of that mission, rather than an air navigation service provider. In essence, when it comes to air traffic control, the FAA is charged with regulating itself. The FAA's risk-averse agency culture has led to a loss of both technical and management expertise, too many overseers, and a lack of customer focus.<sup>6</sup>

***How would the new ATC Corporation operate?*** Two decades ago, to great success, Canada spun off its government air traffic control agency into an independent, nongovernmental nonprofit called Nav Canada. The AIRR Act charters a new nonprofit, called the ATC Corporation, to replace the FAA's Air Traffic Organization as the nation's air navigation service provider. This corporation would be customer-focused and governed by aviation stakeholders from airlines, recreational general aviation, aviation unions, and the Department of Transportation. The Act requires the FAA to complete this "transfer in a systematic and orderly manner that ensures continuity of safe air traffic services"<sup>7</sup> on October 1, 2019.<sup>8</sup>

Following enactment of the AIRR Act, the Secretary of Transportation will assemble a nominating membership board for the purpose of selecting the board of directors. It will consist of the Secretary and representatives of the mainline air carriers (likely Airlines for America), the controllers' union (the National Air Traffic Controllers Association), noncommercial general aviation (likely the Aircraft Owners and Pilots Association), an airline pilots' union (the Air Line Pilots Association), commercial general aviation (likely the National Business Aviation Association), and aerospace manufacturers (likely the Aerospace Industries Association).<sup>9</sup> The principal organizations represented on the nominating board will be determined by the Secretary of Transportation no more than 30 days following enactment.<sup>10</sup>

The ATC Corporation will be governed by a 13-seat board of directors.<sup>11</sup> The composition of the board will be as follows:

- The CEO of the ATC Corporation;

- Two directors appointed by the Secretary to act in the public interest;
- Four directors nominated by the nominating member representing mainline carriers;
- Two directors nominated by the nominating member representing noncommercial general aviation;
- One director nominated by the nominating member representing the controllers' union;
- One director nominated by the nominating member representing the largest airline pilots' union;
- One director nominated by the nominating member representing business general aviation; and
- One director nominated by the nominating member representing aerospace manufacturers.<sup>12</sup>

The initial board of directors will be subject to the approval of the two directors appointed by the Secretary.<sup>13</sup> Subsequent appointments are subject to the approval of the board,<sup>14</sup> except for the two directors who are appointed by the Secretary.<sup>15</sup> Directors representing the principal organizations may not be employees of those organizations.<sup>16</sup> Board members each serve terms of three years.<sup>17</sup>

The AIRR Act also establishes an advisory board to the ATC Corporation's board of directors. Some stakeholders not guaranteed membership on the board of directors will be guaranteed membership on the advisory board of U.S. citizens, with membership limited to 15 seats.<sup>18</sup> Members must include representatives from commercial airports, unmanned aircraft system operators and manufacturers, "appropriate labor organizations," the Department of Defense, and "small communities."<sup>19</sup>

Instead of relying on the existing federal aviation taxes, the ATC Corporation will be allowed to set and collect its own charges and fees. All charges and any changes are subject to the approval of the board of directors.<sup>20</sup> The charging principles are to be consistent with the International Civil Aviation Organization's "Policies on Charges for Air Navigation Services," 9<sup>th</sup> ed. (2012), which, in a nutshell, requires that fees be set based on properly allocable costs that are proportional to system use.<sup>21</sup> If it wishes to prevent a change in the fee schedule, Congress has 90 days from publication to issue a joint resolution of disapproval that the president must sign or Congress override if the president were to veto.<sup>22</sup>

Cost-based user charges will be collected under these principles. Piston aircraft, noncommercial turbine-engine aircraft, and remote air taxis are exempt from these charges.<sup>23</sup> That means hobby pilots and other noncommercial aircraft will be exempted—no doubt an effort to bring powerful stakeholders that had previously expressed skepticism with air traffic control reform over to the pro-reform side.

Failure to pay the fees assessed by the ATC Corporation does not threaten an aircraft operator's ability to access the airspace, but can lead to penalties.<sup>24</sup> The AIRR Act confers a private right of action on the ATC Corporation to sue to collect charges and penalties within two years of nonpayment.<sup>25</sup>

Once the ATC Corporation is up and running, the FAA will provide arm's length safety oversight.<sup>26</sup> Accountability is reinforced by the ability of private citizens and governments to sue the ATC Corporation, which may be held liable to both civil and criminal law.<sup>27</sup>

***What happens to aviation excise taxes that previously funded the FAA's Air Traffic Organization?*** Aviation taxes are the jurisdiction of the House Ways and Means and Senate Finance Committees. However, the thinking of the AIRR Act's proponents is to abolish most of the federal aviation taxes, perhaps leaving one to support the Airport Improvement Program. Nearly two-thirds of the FAA's budget is dedicated to air traffic control, so aviation taxes could easily be slashed following reform.

***Who opposes these reforms?*** The opposition is led by Delta Air Lines and the National Business Aviation Association (NBAA), as well as some government employee unions, Democratic politicians, the Naderite advocacy group Public Citizen, and the highly popular left-leaning news and commentary website The Daily Kos. However, the union representing air traffic controllers, the National Air Traffic Controllers Association, has endorsed the AIRR Act and the nonprofit model.

Left-liberal Democrats and unions are opposed for ideological reasons, believing against all evidence that not only must air traffic control be provided by the government, but that it must be provided by the national aviation safety regulator. Perversely, due to the FAA's inability to modernize its 1960s air traffic control system, the degraded quality of service of air travel may lead some travelers to switch to more dangerous modes of transportation, such as driving.

The business interests opposed to air traffic control reform object on rent-seeking grounds. Delta has stated it opposes reform claiming it "would result in costly organizational disruptions, silos, and new barriers to implementing operational improvements that are already proving to be successful."<sup>28</sup> This view runs contrary to those of the aviation research and management communities, and of every other U.S. airline. Delta recently resigned its membership in Airlines for America largely over the latter's support for reform.<sup>29</sup>

Delta then released a report claiming air traffic control costs and taxes increased in Canada following the government's divestiture.<sup>30</sup> However, to support these claims, Delta conflated Ontario's fuel tax with Nav Canada's air traffic control fees and failed to note that when adjusted for inflation, Nav Canada's air traffic control fees are today around one-third lower than taxes they replaced in the 1990s.

In reality, Delta's opposition to air traffic control reform appears to be motivated primarily by its well-known ability to secure political favors. Delta Senior Vice President for Flight Operations Steve Dickson recently explained to a travel writer that Delta's opposition is due in part to the company's belief that government officials are easier to influence than those that would be employed by the ATC Corporation.<sup>31</sup>

The National Business Aviation Association registers its "strong opposition against any legislation that would enact user fees and strip Congress of its role in protecting

unencumbered access to the air traffic system.”<sup>32</sup> This is understandable, given that the corporate jet and turboprop aircraft operators represented by NBAA historically pay a far lower share of taxes than the share of air traffic control services they consume. An analysis of Fiscal Year 2013 data found that business jet and turboprop aircraft account for 9-11 percent of air traffic control system use, yet pay just 0.6 percent of the tax revenue that supports the system.<sup>33</sup>

A customer-driven system will likely do away with this government favoritism, but fees for normal commercial air travel for the rest of us will likely be lower in the long run. As noted, in Canada, the service charges are approximately one-third lower than the taxes they replaced 20 years ago.<sup>34</sup> However, corporate jet owners and operators will pay more under a user- and cost-based fee structure. Yet, they will directly benefit from the reduced congestion and technology modernization that will be attainable under a private nonprofit air navigation service provider.

*This report was updated to reflect the most recent legislative activity on February 16, 2016.*

## Notes

<sup>1</sup> Robert W. Poole, Jr., “Perspective on Nav Canada’s First 20 Years,” Reason Foundation Air Traffic Control Newsletter #129, January 20, 2016, <http://reason.org/news/show/air-traffic-control-newsletter-129#a>.

<sup>2</sup> Marc Scribner, “ERAM Deployed Five Years Late, NRC Blasts FAA on NextGen Delays,” Competitive Enterprise Institute blog, May 4, 2015, <https://cei.org/blog/eram-deployed-five-years-late-nrc-blasts-faa-nextgen-delays>.

<sup>3</sup> U.S. Government Accountability Office, “Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation,” Report to Congressional Committees, February 2012, <http://www.gao.gov/assets/590/588627.pdf>.

<sup>4</sup> National Research Council, *A Review of the Next Generation Air Transportation System: Implications and Importance of System Architecture*, eds. David E. Liddle and Lynette I. Millett, Washington, D.C.: The National Academies Press, 2015, <http://www.nap.edu/catalog/21721/a-review-of-the-next-generation-air-transportation-system-implications>.

<sup>5</sup> U.S. Department of Transportation, “Air Traffic Control Operations,” Office of Inspector General website, <https://www.oig.dot.gov/oversight-areas/aviation/air-traffic-control-operations>.

<sup>6</sup> Poole, “Organization and Innovation in Air Traffic Control,” Reason Foundation Policy Study 431, January 2014, [http://reason.org/files/air\\_traffic\\_control\\_organization\\_innovation.pdf](http://reason.org/files/air_traffic_control_organization_innovation.pdf).

<sup>7</sup> Aviation Innovation, Reform, and Reauthorization Act, H.R. 4441, 114<sup>th</sup> Congress (2016), Sec. 211 (proposing to amend 49 U.S.C. § 90302(a)).

<sup>8</sup> Ibid. (proposing to amend 49 U.S.C. § 90101(a)(8)).

<sup>9</sup> Ibid. (proposing to amend 49 U.S.C. § 90305(a)).

<sup>10</sup> Ibid. (proposing to amend 49 U.S.C. § 90305(b)).

<sup>11</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(a)).

<sup>12</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(b)).

<sup>13</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(c)(1)).

<sup>14</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(c)(2)).

<sup>15</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(c)(3)).

<sup>16</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(e)(2)).

<sup>17</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(g)(2)).

<sup>18</sup> Ibid. (proposing to amend 49 U.S.C. § 90308(c)(1)).

<sup>19</sup> Ibid. (proposing to amend 49 U.S.C. § 90308(c)(2)).

<sup>20</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(b)).

<sup>21</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(c)(1)).

<sup>22</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(h)).

<sup>23</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(c)(4)–(5)).

<sup>24</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(d)).

<sup>25</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(e)).

<sup>26</sup> Ibid. (proposing to amend 49 U.S.C. § 90501).

<sup>27</sup> Ibid. (proposing to amend 49 U.S.C. § 90310(a)(5)–(6)).

<sup>28</sup> Steve Dickson, “Privatizing Air Traffic Organization threatens customer service,” Delta Air Lines website, September 28, 2015, <http://news.delta.com/op-ed-privatizing-air-traffic-organization-threatens-customer-service>.

<sup>29</sup> Trebor Banstetter, “Delta to immediately end A4A membership,” Delta Air Lines website, October 29, 2015, <http://news.delta.com/delta-immediately-end-a4a-membership>.

<sup>30</sup> Delta Air Lines, “The Costs of Privatizing Air Traffic Control and How it Will Impact Airline Travelers,” February 1, 2016,

<http://news.delta.com/sites/default/files/The%20Costs%20of%20Privatizing%20Air%20Traffic%20Control.pdf>.

<sup>31</sup> Brett Snyder, “Across the Aisle from Delta’s SVP of Operations on Why Privatizing Air Traffic Control Would Be Bad,” The Cranky Flier, November 23, 2015, <http://crankyflier.com/2015/11/23/across-the-aisle-from-deltas-svp-of-operations-on-why-privatizing-air-traffic-control-would-be-bad/>.

<sup>32</sup> National Business Aviation Association, “Call to Action: Help Fight FAA Privatization, User Fees,” June 24, 2015, <https://www.nbaa.org/membership/letters/2015/20150625-no-privatize-atc.php>.

<sup>33</sup> David Weingart, “Summary of ATO Cost and Activity Data,” Transportation Research Board of the National Academies, Air Traffic Control Symposium on Organizational Reform Options, July 7, 2015, <http://onlinepubs.trb.org/onlinepubs/sp/ATFReform/Weingart.pdf>. For a 2007 analysis from the Department of Transportation’s Office of Inspector General with similar findings, see Honorable Calvin L. Scovel III, “FAA’s Financing Proposal,” Testimony before the Committee on Transportation and Infrastructure Subcommittee on Aviation, United States House of Representatives, March 21, 2007, [https://www.oig.dot.gov/sites/default/files/FAA\\_Financing\\_Testimony\\_Final.pdf](https://www.oig.dot.gov/sites/default/files/FAA_Financing_Testimony_Final.pdf).

<sup>34</sup> Nav Canada, “Overview of Service Changes,” January 2015, <http://www.navcanada.ca/EN/products-and-services/Documents/Service%20Charges-Eng.pdf>.



**Richard H. Anderson**  
Chief Executive Officer

February 2, 2016

The Honorable Bill Shuster  
Chairman  
The Honorable Peter A. DeFazio  
Ranking Member  
Committee on Transportation & Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Shuster and Ranking Member DeFazio:

On behalf of the nearly 80,000 employees of Delta Air Lines, I write to you regarding the future of our nation's air traffic control system, which serves essential public safety, economic, and national security functions. We understand a legislative proposal to outsource these public functions to a Congressionally-sanctioned monopoly controlled by private interests will soon be unveiled. I want to be clear about where Delta stands on this issue. We oppose privatizing U.S. air traffic control or any other attempt to remove air traffic control from the Federal Aviation Administration (FAA). It is unnecessary and unwise. American air traffic control works because it works for the American people—and we should keep it that way.

#### **The Most Challenging Airspace In The World**

In discussing this issue, we must start from the fact that the United States has the largest and most complex airspace in the world. The U.S. has over 13,000 airports—more than the next 10 countries combined.<sup>1</sup> At any moment, around 7,000 aircraft are in flight.<sup>2</sup> As a result, U.S. air traffic controllers must manage both highly congested areas and remote tracts with hundreds of landing locations and extreme weather conditions. U.S. airspace is also unique in its diversity. It has plentiful commercial flights, the most robust general and military aviation in the world, and leads in developing large unmanned aerial vehicles and other disruptive innovations.

As a result, we have an airspace that is different in kind from our international peers, and materially more challenging to control. For example, compared to Canada, the United States has over eleven times as many airports, over five times as many general aviation craft, and over thirty-two times as many military aircraft. U.S. civilian air traffic controllers track over seven times as many flight hours as their Canadian counterparts.

COMPARING U.S. AND CANADIAN AIRSPACE		
	United States	Canada
Airports	13,513 <sup>1</sup>	1,493 <sup>1</sup>
General Aviation Craft	199,927 <sup>2</sup>	36,375 <sup>6</sup>
Military Aircraft	13,717 <sup>7</sup>	426 <sup>8</sup>
Total IFR Flight Hours by Civilian Controllers	24,688,849 <sup>9</sup>	3,370,104 <sup>10</sup>

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### **A Safe, Effective Air Traffic Control System**

We must also recognize that the U.S. air traffic control system works. The first and most important mission of the FAA is safety—and its record is unparalleled. On an average day, the FAA safely handles nearly 70,000 flights carrying roughly two million people. Every American that gets on a plane has complete faith in our air-traffic control system.<sup>11</sup> Safety is ingrained in the culture of the FAA, and it continually works to handle new challenges and improve the already high level of safety in the industry.

The FAA also moves traffic effectively, besting many of its peers on key performance metrics. For example, U.S. airports operate at 97% of their capacity or demand, which compares favorably to the only airspace that approaches ours in complexity, the European Union.<sup>12</sup> Three- and four-runway airports in the United States can handle about a third more flights per hour than those in Europe.<sup>13</sup> Delays attributed to air traffic control are lower in the U.S. than the EU.<sup>14</sup> Less than 10% of U.S. flights are affected by air-traffic control-related delays (which includes delays related to non-extreme weather, high volume, equipment problems, and closed runways), and those —rates have improved by over 25% in the last five years.<sup>15</sup> These numbers are particularly impressive given the unique U.S. airspace.

### **Moving Forward on NextGen**

Privatization advocates frequently complain about the pace of implementing NextGen. But we should recognize two important facts. First, despite dire predictions of failure, the FAA has evolved its existing technology platforms to meet emerging needs. Second, the FAA is making real progress on implementing NextGen.

For example, since October 2014, when the FAA and the aviation industry agreed on a plan to advance four major NextGen priorities over the next three years, the FAA has met 19 deployment commitments.<sup>16</sup> This success has built credibility with industry and is already reducing fuel usage, flight distance, delays, and taxi times. We know that because the FAA is tracking these metrics and making the results public.<sup>17</sup>

What caused this emerging turnaround? Three key factors have come into alignment. *First*, the FAA has engaged private stakeholders to an unprecedented degree, working with all of us to set priorities, establish implementation benchmarks, and define performance metrics. *Second*, the FAA has focused its attention on near-term incremental changes that will deliver real results, while advancing a long-term plan. *Third*, the FAA has executed on these concrete, focused priorities, building private-sector confidence.

In short, the public-private collaboration we need to upgrade FAA systems—subject to congressional oversight—is already underway and delivering concrete results.

### **Serious Risks And Speculative Benefits**

Advocates describe privatization as a cure-all for what ails the FAA. But the truth is that it carries serious risks, offers speculative benefits, and is not necessary.

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- **The transition will threaten current progress.** The first drawback to privatization is that it will break the current momentum for implementing NextGen. For both the FAA and stakeholders, privatization would take years of attention and resources away from upgrading technology and redirect it to organizational charts, corporate bylaws, and complex transitions. It's hard to predict how long this transition period would last, but NavCanada's experience is concerning. Created in 1996 with plans for an 18 month transition, the entity's finances remained turbulent for years afterward, with user fees in flux through 2004.<sup>18</sup> Here, FAA Assistant Administrator for NextGen Edward Bolton has warned of a seven-year transition period that would disrupt implementation.

This transition would come at the worst possible time—we are making real progress on NextGen and have a path to continue that momentum. It's time to drive NextGen, not take a multi-year pit stop.

- **Privatization may increase consumer costs.** At present, the FAA runs more efficiently than most of its peers, even without accounting for the challenging airspace it manages. Its air-traffic control cost per flight hour, \$450, is below the international average of \$498.<sup>19</sup> The disparity is even greater when all aviation taxes and fees are considered. For example, Delta analyzed the air-traffic-control costs, government taxes, security fees, and passenger facility charges associated with an illustrative 1000km A320 flight. It found that overall costs in 2012 were much lower for the United States (\$2,590) than for Canada (\$6,654) and the United Kingdom (\$9,095), both of which have privatized air-traffic control. Moreover, after privatization, these costs increased by over 50% in Canada and by 140% in the U.K. The traveling public will not tolerate that kind of increase here.

- **Privatization will complicate the FAA's focus on safety.** At present, the FAA effectively balances safety and efficiency because it has responsibility for both functions. Privatization advocates claim that safety is assured because the FAA will have an arms-length regulatory relationship with the privatized entity. However, divorcing the organizations will make day-to-day coordination more difficult. Moreover, the separation will change each entity's culture and mission. The privatized entity will be driven to increase revenue and reduce costs—goals that will at times be at odds with the remaining FAA's safety mandate.

- **Privatization will outsource public policy to private interests.** Air-traffic control requires policy decisions that should be made by the people's elected representatives, not private interests. For example, a privatized entity would control who can access the skies and under what terms—both in setting procedures and allocating resources. Rural areas, general aviation, and other airspace users that generate less revenue will likely suffer—in the same way that private investment decisions have left rural Americans with inadequate broadband access. In addition, the privatized entity will levy de facto taxes on airspace users and the traveling public. It will also set flight paths that impact living conditions in communities near airports. These are extraordinary powers to delegate to an entity controlled by private interests, and may well be unconstitutional. It begs the question who will look out for the public interest after privatization?



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- **The private entity would not “operate like a business.”** Advocates claim that a private entity will be more efficient because it will operate as a business. But the proposed entity is not a real business—it would be a Congressionally-sanctioned monopoly controlled by private interests but subsidized by taxpayers. As a result, the entity would not benefit from the market discipline that pushes businesses to be more efficient. No matter how high its user fees, or how poor its service, every airspace user would have to rely on it.

This new entity would also be too essential to fail. If it makes mistakes, taxpayers will have to bail it out. That means that private interests could borrow billions of dollars with an implicit federal guarantee. A bailout would not be unprecedented: the U.K. had to rescue its privatized air traffic control service after a downturn in trans-Atlantic air travel.<sup>20</sup> Here in the U.S., the upfront cost of bailing out Fannie Mae and Freddie Mac was over \$185 billion.

Taxpayers will also likely subsidize the pension and tort liability of the private entity. Rumors suggest that the private entity will keep its employees in the federal pension system—allowing it to benefit from the recently-increased contributions made by all federal workers. On tort liability, the Judgment Fund has paid out nearly \$225 million for air crash claims over the last ten years, a period without a catastrophic crash.<sup>21</sup> The private entity would need liability insurance to cover such claims, but given the massive potential exposure, such insurance would likely require a taxpayer-subsidized government backstop.

Instead of a real business pushed by competition to improve its performance, we would be creating a monopoly that is controlled by private interests but would not bear the full costs of financial mismanagement or operational negligence. Delta has no confidence that such an entity will perform more effectively than the FAA—especially with the absence of Congressional oversight.

- **Funding concerns do not justify privatization.** Privatization advocates often cite funding challenges as a reason for reform. But the trust fund is more than sufficient to fund the FAA’s operations.<sup>22</sup> And even if one had a concern with funding, there are potential solutions that retain congressional oversight and control over this important public function. In fact, privatization was just one of several options recently evaluated by GAO—one that it cautioned could reduce Congressional oversight and control over air traffic control.<sup>23</sup>

In conclusion, we have yet to see an accounting of the costs of privatization or a convincing, concrete case for the benefits. There is simply no compelling reason to change such a critical system that works so very well. Indeed, it feels like an experiment. Our nation’s air traffic control system is too important—to public safety, economic growth, and national security—and working too well for such an experiment to be prudent.

Sincerely,



cc: Members of the United States Congress

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<sup>1</sup> Central Intelligence Agency, *The World Factbook 2014*, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2053rank.html> (reflecting 2013 data).

<sup>2</sup> FAA, *Air Traffic 101*, [https://www.faa.gov/air\\_traffic/briefing/](https://www.faa.gov/air_traffic/briefing/) (last modified Sept. 18, 2014); FAA, Air Traffic Organization, [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/](http://www.faa.gov/about/office_org/headquarters_offices/ato/) (last modified Jan. 14, 2014).

<sup>3</sup> Central Intelligence Agency, *The World Factbook 2014*, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2053rank.html> (reflecting 2013 data).

<sup>4</sup> *Id.*

<sup>5</sup> General Aviation Manufacturers Ass'n, *2014 General Aviation Statistical Databook & 2015 Industry Outlook* at 34 tbl. 2.14 (2015), available at [http://www.gama.aero/files/GAMA\\_2014\\_Databook\\_LRes%20-%20LowRes.pdf](http://www.gama.aero/files/GAMA_2014_Databook_LRes%20-%20LowRes.pdf). Data reflects active aircraft; there are another 66,062 inactive aircraft in the United States. *Id.*

<sup>6</sup> *Id.* at 23 tbl. 2.1.

<sup>7</sup> Flightglobal, *World Air Forces 2016*, at 5 (2015).

<sup>8</sup> *Id.* at 37-40.

<sup>9</sup> Civil Air Navigation Services Organisation (CANSO), *Global ANSP Performance Report 2015: The ANSP View*, at 6 fig. 1 (2015), available at <https://www.canso.org/global-ansp-performance-report-2015-ansp-view>.

<sup>10</sup> *Id.*

<sup>11</sup> FAA, National Airspace System (NAS) Overview (Aug. 25, 2015), [https://www.faa.gov/air\\_traffic/technology/cinp/fti2/documents/media/nas\\_overview.pdf](https://www.faa.gov/air_traffic/technology/cinp/fti2/documents/media/nas_overview.pdf).

<sup>12</sup> The FAA measures throughput using its System Airport Efficiency Rate metric (SAER), which measures how well airports are able to meet demand, given their capacity. See FAA, Aviation System Performance Metrics—SAER, <http://aspmhelp.faa.gov/index.php/SAER> (last modified July 15, 2015).

<sup>13</sup> FAA and EUROCONTROL, *Comparison of Air Traffic Management-Related 2013 Operational Performance: U.S./Europe, 2013*, at 39 fig. 3.12 (June 2014), available at [https://www.faa.gov/air\\_traffic/publications/media/us\\_eu\\_comparison\\_2013.pdf](https://www.faa.gov/air_traffic/publications/media/us_eu_comparison_2013.pdf).

<sup>14</sup> In 2013, the U.S. and Europe had respectively 3.2% and 3.1% of departures delayed due to air-traffic control. *Id.* at 66 tbl. 5-1. However, U.S. delays were largely driven by weather (e.g., thunderstorms), while European delays were the result of capacity and staffing constraints. *Id.* at 66. When weather-related delays are excluded, U.S. air-traffic control-related delays are substantially lower. *Id.* at 67 figs 5.4, 5.5.

<sup>15</sup> Bureau of Transportation Statistics, *Airline On-Time Statistics and Delay Causes*, [http://www.transtats.bts.gov/OT\\_Delay/OT\\_DelayCause1.asp](http://www.transtats.bts.gov/OT_Delay/OT_DelayCause1.asp) (last accessed February 1, 2016). In 2015 (through November), 5.42% of flights were delayed by the National Aviation System. *Id.* In 2003-2008 and 2009-2014, National Aviation System delays averaged 7.78% and 5.99% of flights. *Id.*

<sup>16</sup> Letter from Richard Anderson to Michael Whitaker, FAA Deputy Administrator, June 23, 2015, <http://www.ntca.org/Files/Miscellaneous%20Files/letter-NAC%20Chair%20to%20FAA%20Deputy%20Admin.pdf>.

<sup>17</sup> FAA, NextGen Performance Snapshots, <http://www.faa.gov/nextgen/snapshots/> (last modified January 27, 2016).

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<sup>18</sup> Rui Nelva, *Institutional Reform of Air Navigation Service Providers: A Historical and Economic Perspective* 72 (2015).

<sup>19</sup> CANSO, *Global ANSP Performance Report 2015: The ANSP View*, at 10 fig. 2.

<sup>20</sup> *Air Traffic Bailout Confirmed*, BBC News (Mar. 20, 2002), available at <http://news.bbc.co.uk/2/hi/business/1884324.stm>.

<sup>21</sup> Report generated from Treasury Department Judgment Fund Database, available at <https://jfund.fms.treas.gov/jfradSearchWeb/JFPymtSearchAction.do>.

<sup>22</sup> Federal Aviation Administration, *How the Trust Fund is Spent*, [https://www.faa.gov/about/budget/aatf/how\\_trustfund\\_spent/](https://www.faa.gov/about/budget/aatf/how_trustfund_spent/) (last modified June 19, 2015).

<sup>23</sup> Government Accountability Office, "Aviation Finance: Observations on the Effects of Budget Uncertainty on FAA at 28 (Nov. 19, 2015), available at <http://www.gao.gov/assets/680/673798.pdf>.



## EAA STATEMENT FOR THE RECORD - EXECUTIVE SUMMARY

## U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

## HEARING TO REVIEW AIR TRAFFIC REFORM PROPOSALS – H.R. 4441 – FEBRUARY 10, 2016

*The Experimental Aircraft Association **strongly opposes** privatizing, corporatizing, or otherwise removing the U.S. air traffic control system from the Federal Aviation Administration, as proposed in the Aviation Innovation, Reform and Reauthorization Act of 2016 (H.R. 4441). While EAA supports the need for stable and predictable funding for the FAA, ATC privatization, in our view, would not provide the claimed efficiency and financial benefits while introducing serious risks and consequences to general aviation and the U.S. economy.*

EAA's opposition is based on the following rationale, among others:

- 1) **Airspace and Air Traffic Service belong to the People:** The airspace system is a national asset. Privatizing air traffic control services away from federal control and congressional oversight and ceding it to a private board would result in authority monopolized by those with the greatest financial resources on that board.
- 2) **ATC board self-interest over public interest:** Representatives on a privatized ATC board weighted heavily toward airline and commercial aviation interests, would result in an immediate conflict of interest between maximizing profit for their own entities while minimizing costs (services) to areas not in their self-interest.
- 3) **A threat to current modernization progress:** While there have been problems with the FAA's NextGen timeline and execution, a privatized system would lack the will or resources to make comprehensive improvements to the entire ATC infrastructure.
- 4) **Services to general aviation and rural airports could disappear:** A privatized ATC corporation would have the power to first provide for the self-interests of commercial aviation by virtue of their economic influence on the system. Those without representation on the board would be shut out of resource allocation considerations.
- 5) **Creates a congressionally mandated monopoly managed by private interests:** This is not privatization that creates a competitive marketplace, but an entity that has total control over airspace access. Further, if the promised financial benefits do not emerge, the American taxpayer would be forced to pay for a system bailout.
- 6) **Open to unlimited civil and tort liability:** A privatized ATC corporation would be open to nearly unlimited liability for the entire airspace system and its operation and would have to insure itself against such liability. The cost of such insurance or losses would likely be extraordinary and an added burden to system users.
- 7) **FAA safety oversight compromised:** A privatized ATC system would operate at an "arms-length" regulatory relationship with the FAA whose operational safety oversight would be diminished. The new ATC corporation would need to duplicate the FAA's safety system at added cost and the possibility of conflicts of interest.
- 8) **Loss of public airspace access in case of national emergency:** The legislation would turn over control of the national airspace to the Secretary of Defense in times of national emergency, with no civilian input into the decision making over future airspace access. 9/11 demonstrated the risk of ceding control from civilian hands.

EAA proposes an alternate solution that maintains an equal playing field for all users:

*The current Airport and Airways Trust Fund today provides more than 92 percent of the FAA's total annual budget. That number is expected to grow. Congress can "wall off" revenue obtained through current excise taxes exclusively for the U.S. airport and airways system and FAA operating budget while establishing an automatic annual appropriation of those funds to the FAA ensuring funding stability and predictability even in times of budget cuts or government shut down. A small General Fund contribution, representing the benefit to all Americans of the airways system, would provide the remainder of the FAA budget and serve as a cushion for periods of economic downturn when trust fund revenue naturally declines. This ensures continued congressional oversight and involvement.*



**Experimental Aircraft Association (EAA)**  
**Statement for the Record**  
**United States House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Hearing to Review Air Traffic Reform Proposals - HR 4441**  
**February 10, 2016**

The Experimental Aircraft Association (EAA), representing the aviation interests of more than 190,000 aircraft owners, pilots, and aviation enthusiasts, strongly opposes privatizing, corporatizing, or otherwise removing the U.S. air traffic control system from the Federal Aviation Administration (FAA) as proposed in the Aviation Innovation, Reform and Reauthorization (AIRR) Act of 2016, H.R. 4441. We believe that it is neither necessary or wise to undertake such a disruption to a national airspace system that is the most complex yet the safest in the world. It is designed well and works well for the benefit of the entire American public. We believe that ATC privatization would deliver few of the promised benefits while introducing serious foreseeable risks and potential unforeseen consequences that will be detrimental not only to general aviation but to the entire U.S. economy.

EAA supports the assertion by ATC privatization proponents that the FAA needs stable and predictable funding in order to manage an efficient and safe national airspace system, as well as successfully implement extensive capital programs such as NextGen. However, we believe that far from improving the predictability and stability of funding, ATC privatization will introduce serious new economic risks to the system as a whole and specific threats to airspace access and service availability for general aviation, which represents 1.1 million jobs in this country and more than \$200 billion in economic activity.

The Airport and Airway Trust Fund (AATF), whose revenue is derived from direct users of the system, today pays for 92.77 percent of the FAA's total annual budget. According to the Congressional Joint Committee on Taxation AATF revenue is expected to grow at 4.8 percent over the next decade. We maintain that the AATF should continue to be supported by existing

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user excise taxes and fees and that those revenues should be walled off for their intended purpose of funding capital improvements to the U.S. airport and airways system as well as funding the bulk of the FAA annual operating budget. We further believe that an automatic annual appropriations process should be legislated so that AATF revenue is distributed to the FAA on an annual basis without congressional intervention, thus eliminating the vast majority of funding risk and uncertainty introduced by the highly unpredictable congressional authorization and appropriations processes.

Lastly, we believe that the General Fund contribution, currently at an all-time low of 7.23 percent of the FAA budget, represents a minor risk to future funding in times of budget cuts or government shutdown. Under our proposal, money would continue to flow to the FAA from the AATF to maintain ATC operations uninterrupted. That said, EAA also believes that it is imperative that some General Fund contribution continue to be authorized and appropriated by Congress because the national airspace system represents a benefit to all of society. The General Fund contribution also serves as a shock absorber of sorts to fill the gap in funding during periods of aviation industry or national economic downturn when Trust Fund revenue declines due to reduced aeronautical activity as experienced during the period of Fiscal Years 2009 through 2013. The nation's airspace and air traffic system are too vital to the U.S. economy and commerce to leave entirely to the vagaries of economic cycles. On that basis alone, proposals to fully privatize the funding of the air traffic system would introduce potentially greater uncertainty and inconsistency in funding than exists today.

The following is a detailed analysis of our concerns and recommended solutions.

### **Most Complex Airspace System in the World**

The United States operates by far the most complex airspace in the world with the densest and most diverse traffic mix to be found anywhere. The nation's air traffic system safely separates and directs the movement of approximately 6,000 aircraft in the air at any one time flying to and from more than 13,000 airports. There are more airports in the U.S. system than the next ten largest countries combined. During EAA AirVenture, our annual weeklong convention each summer at our headquarters in Oshkosh, Wisconsin, our home airport becomes the busiest in the world, handling an average of 2,000 operations per 10-hour day and exceeding 3,300 operations on peak days. This evolution rate can reach a takeoff or landing every 17 seconds, significantly eclipsing such densely congested areas as Chicago and Dallas and requiring special procedures and significant additional air traffic resources to manage safely and efficiently. Nowhere else in the world can or does something like this occur and a privatized ATC system is highly unlikely to support such world-class activities.

The U.S. airspace system is not only complex but it is also diverse in terms of the types, speeds, and capabilities of aircraft using the system, climatology and meteorological impacts, and airspace types from some of the densest to some of the most remote in the world. This

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diversity, complexity, and density makes for the world's most challenging environment for air traffic control technologies and workforce.

Proponents of ATC privatization often reference the privatization experience of other nations such as Canada and the European Union as examples of systems that have successfully implemented privatization. While individual parallels are often drawn to specific locations or circumstances, all of the foreign privatized ATC systems of the world combined do not handle the traffic density and mix of the U.S. national airspace system. Privatization proponents point most often to Canada in the belief that a privatized ATC system can be scaled up to U.S. standards. But the U.S. has 11 times more airports, five times more general aviation aircraft, 32 times more military aircraft, and operates seven times more flight hours than Canada. Not one single Canadian metropolitan airspace area even approaches the traffic density and mix of any of the dozen or so densest metropolitan airspace areas in the U.S. Scaling existing privatized air traffic systems exponentially to the size and complexity of the U.S. National Airspace System would prove to be daunting at best. That also accepts at face value that privatized systems in other countries work well in the eyes of the direct users of the system, which is deeply debatable.

#### **Safest and Most Effective Air Traffic System in the World**

There can be no argument that the U.S. enjoys the safest national airspace system and air traffic control operation in the world, while at the same time meeting the challenge of effectively handling the greatest number of flights and moving the largest number of passengers to be found anywhere. Each day, the U.S. ATC system handles 70,000 flights and safely moves more than two million passengers. This is an astounding feat that is largely taken for granted by the American public as being commonplace, because it is. The FAA air traffic system enjoys the complete faith of the American public because it works so well. Like aviation safety as a whole, it is big news when something goes wrong because it happens so rarely. Safety is the primary focus of the government operated air traffic system with efficiency being a secondary motivation. The FAA does not share any of the conflict of interest inherent in privatized systems where cost reduction or profit motives creep in as a primary or secondary motive.

The next closest comparison to the U.S. in terms of complexity, traffic density, and safety can be found in the European Union. As complex and vast as Eurocontrol is, the US air traffic management system handles 57 percent more traffic and our hub airports handle about one third more flights per hour than comparable airports in Europe. Delays attributable to air traffic services are significantly lower in the U.S. than in Europe and, according to the Bureau of Transportation Statistics, have improved dramatically in the past five years. The US ATC system is not only effective at moving aircraft and people safely, it is doing so in a cost effective manner when compared to the rest of the world. According to CANSO, who present themselves as the global voice of air traffic management services, the U.S. air traffic cost per flight hour is currently 10 percent lower than the international average. There can be no argument that

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compared with other air traffic management (ATM) systems worldwide, the American public is getting their money's worth for a safe, effective, and efficient air traffic system.

### **NextGen is Moving Forward**

The U.S. enjoys an excellent air traffic system today but there is always room for improvement. The FAA has embarked on a long-term modernization program called NextGen that will further improve performance and capacity. Considerable criticism has been levied at the FAA over its ability to field complex, high-risk, technologies and there is no doubt that there has been room for improvement in that regard. But not all of the blame rests with the FAA. Much of the difficulty in fielding major long-term infrastructure and capital investment rests with the sporadic short-term funding that continually halts progress or precludes the issuance or maintenance of contracts necessary to support NextGen implementation. The congressional funding environment over the life of the NextGen program has made effective management nearly impossible. Congress must accept some level of responsibility and culpability for the failures in this regard. Indeed, this is the rationale used by supporters of a privatized ATC system for addressing funding concerns.

That said, despite the near impossible funding situation, the FAA has moved NextGen forward. The current FAA leadership has done an admirable and successful job of engaging private industry and aviation stakeholders to prioritize near-term improvements and garner immediate positive results while continuing to advance the long-term plan. This has served to build confidence with the private sector and today there is a generally unified view of the path that ATC modernization is on.

The irony of calling for privatization to advance the interests of ATC modernization and improve the funding of major capital programs is that in our estimation, it is very unlikely that NextGen would have ever been started, let alone advanced far, under any privatized funding system. The FAA has often had to drag industry and the private sector into modernization using every regulatory and policy tool it has, not the other way around. Over time there have been consistent calls for ATC modernization but when industry has been called upon to incur direct costs for equipment installation or other necessities, there has been considerable reluctance or outright opposition. It is unlikely that an ATC system governed by the very stakeholders on whom new costs will be incurred would have entertained NextGen, let alone funded it. Implementation of NextGen has occurred because of the national imperative to invest in a modernized air traffic system at the congressional and federal level, not because private industry clamored to underwrite it. Left in the hands of industry it is unlikely that ATC modernization would have begun let alone progressed to the point that it has.



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## **ATC Privatization Poses Serious Risks and Unlikely Benefits**

### ***Airspace and Air Traffic Services Belong to the People***

The nation's airspace and air traffic control system is a national asset and utility that serves or impacts in one way or another every U.S. citizen. This includes those who directly use the system (airlines, cargo haulers, passengers, general aviation, military), those who benefit indirectly from its existence (mail, commerce, employment, package delivery, medical transport, agriculture, police, fire, and rescue services), and those on the ground who are only impacted by it (community access, employment base, noise, pollution concerns). As a national asset that touches every citizen of the country in one way or another, airspace and air traffic control requires policy decisions that reflect the greater good of the nation and not just direct users of the system or a subset thereof. The only way for such diverse interests and concerns to be adequately heard and represented is through our elected officials at a national level and by an impartial federal agency whose mandate is to fairly weigh the input of all concerned citizens. This is the case with the existing government run air traffic system under the Federal Aviation Administration.

Privatized ATC or any system that is governed by a board of industry representatives has no mandate or interest in representing the broader concerns of the public, only the cost effectiveness and efficiency of providing ATC services to direct users of the system. Such a board would engage in resource allocation and policy setting with little public input and largely for the benefit of those on the board with the greatest financial resources. A board with such power to set priorities and assess or avoid fees would control who can access what airspace and the terms on which that access is predicated.

In a privatized system, those entities that generate the greatest percentage of revenue will fundamentally call the shots. This, according to sponsors of privatization legislation, is the entire point. So while some interests other than airlines, such as general aviation, may have a seat at the board room table, they will be largely marginalized in any discussion of resource allocation by virtue of the relatively small contribution made to the AATF by general aviation. Those without representation on the board at all will be fundamentally shut out of any policy setting or resource allocations discussion. The concerns of rural communities and airports, private citizens on the ground, and public interest groups such as passenger rights and environmental organizations would go largely unheard and unheeded.

ATC privatization means not only delegating to private interests the authority to manage the system and allocate resources, it also has the power to tax by another name in the form of implementing and adjusting rates for user fees (another name for taxes by a non-government agency) to suit its desires or needs without input from the broader public. Further, flight paths and procedures will be set by the corporate entity with little or no input from the affected public on the ground. Community input will be all but non-existent. The fundamental policy question is: in the absence of Congress and an impartial federal agency listening and

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responding to public input and concern, who looks out for the public interest under a privatized national airspace and air traffic system? As the legislation is currently constructed it would be the handful of major air carriers whose primary aim is to maximize efficiency of the system and minimize costs to themselves for the highest possible profit margins.

***Control and Access Will Be Compromised for Non-Airline Users of the System***

Historically the U.S. ATC and airspace system operates on a first-come, first-served basis provided that an aircraft is properly equipped for a given type of airspace. This fundamental principle of equal access for all has been arbitrated and protected by the FAA since its inception, sometimes in the face of relentless pressure to do otherwise when a profit motive was at stake. Airspace is considered a national resource that is guarded and apportioned by the federal government. It takes into account the needs of all stakeholders both direct and indirect.

Any ATC system that removes the FAA as the national arbiter of fair and equal access and places it in the hands of private enterprise is destined to disadvantage small and marginal users of the system. Proponents of ATC privatization have been known to say that the airlines and their customers pay the most into the air traffic system and therefore get to call the shots. That is how the governance of the proposed ATC corporation is structured and precisely why privatization is a clear and present threat to other system users' long-term access. Ultimately, ATC privatization is all about who gets to control the system, who has access to it, and at what price. Under the current proposal the ATC corporation would be governed by a board that is economically dominated by a handful of airlines and an airline pilot union who already routinely refer to the NAS as "their" airspace, long before they are ever handed the keys to the system.

Multi-billion dollar companies have specific goals for airspace access and control and would dominate the decision making of any privatized system. That is, after all, the goal of the primary proponents of ATC privatization. Airlines want to control access for the benefit of their bottom line, driving other users out of the system in congested airspace. This is not new. There has been longstanding pressure by air carriers to exclude other users from what they perceive to be "their" airspace. Further, air carriers want to offload cost onto other users of the system, which in the past had been the primary argument for privatization but now is artfully cloaked in arguments for stable and predictable system funding.

Meanwhile, advocates for unmanned aerial systems (UAS), as relatively new users of the system, seek access and control of lower levels of airspace outside of congested areas where general aviation has historically operated without conflict with the airlines. The UAS advocates include some of the world's largest companies by capitalization who have the deep pockets necessary to ensure such access in a privatized system. Meanwhile, the FAA has been accused of impeding UAS access to the NAS in its honest bid to ensure the continued safety of manned flight and fair airspace access for all. Under the current proposal there are up to two non-governmental seats on the governing board to be appointed by the DOT Secretary. It is not much of a leap to believe that political pressure and economic might would allow these multi-

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billion-dollar drone advocates to be represented on the board as DOT appointees. Under this scenario it can be reasonably anticipated that over time general aviation, with its comparatively low level of economic might and political clout, will be squeezed out of congested airspace by the airlines and from lower altitudes where it traditionally operates by the commercial mass appeal of drones.

Finally, governed by a board that is economically dominated by air carriers and possibly UAS proponents, a privatized ATC system is unlikely to invest in airports and ATC services where commercial airline traffic is not present or where such investment does not favorably impact the bottom line of an airline or drone operator. Rural airport funding and general aviation ATC services will be the first to be cut even if the privatized ATC system defies predictions and actually reaches revenue goals. The airlines will simply refuse to have “their” revenue support infrastructure and services that do not directly serve them. The national airspace system as a whole will suffer tremendous degradation. General aviation as we know it today will slowly wither away, taking the form it has in nearly every other country with a privatized ATC system; which is, all but non-existent.

***Transition to a Privatized System Threatens Current Modernization Progress***

While there is much gnashing of teeth in Washington over the success and merits of ATC modernization through the NextGen program, the fact of the matter is that NextGen is progressing at a rate greater than or equal to the rate of industry acceptance and adoption of new technologies. An ATC system run by stakeholders, particularly those whose primary interest is their own corporate bottom lines, is necessarily focused on current costs and revenue. It does not have the drive or capacity to implement nationwide infrastructure necessary for system-wide modernization for the benefit of all. This is especially true when the implementation of modernization comes with significant direct costs to the very system users planning and governing the system.

As previously stated, it is highly unlikely that new ATC technologies now being fielded successfully by the FAA under NextGen would have ever garnered initial investment under a privatized system. This includes foundational technologies of NextGen such as Automated Dependent Surveillance - Broadcast (ADS-B) which imposes significant cost transfer from the ground based ATC system to the airplane cockpit. Were it not for the FAA’s ability to mandate equipment requirements and implementation deadlines by rulemaking, firmly standing by those implementation dates in the face of industry opposition, ADS-B as a cornerstone of NextGen would never have made it to fruition. This is a fundamental flaw in the argument that privatization or industry corporate governance will lead to accelerated and more efficient adoption of NextGen and other modernization technologies. The stakeholders have to actually want it badly enough to pay for it.

Long term investment in national infrastructure can rarely be supported on the basis of current quarterly corporate earnings and profits. Such endeavors require national will and resolve to

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invest in the future. Current pressure to reduce cost and maximize profits have led the airlines to attempt to delay installation of ADS-B equipment and the cost to individual general aviation aircraft owners has made the prospect equally unpalatable. In the absence of federal government rulemaking, mandates, and safety oversight, introduction of modernization technology would be chaotic or even unlikely. Ironically, it was the airlines who initially pressed for ADS-B and general aviation who opposed it. As the FAA deadline for installation and the consequent bill for doing so approaches, it is general aviation that is adopting ADS-B technology in large numbers and the air carriers who in many instances are balking or seeking deadline extensions. That does not bode well for implementing modernization under a system of governance dominated by those same air carriers.

Some technologies that have dramatically improved the safety and utility of general aviation in recent years would likely never have seen investment under a user-paid system economically dominated by the airlines. A clear example of this was FAA investment in the GPS Wide Area Augmentation System (WAAS) that made satellite based precision and non-precision instrument approaches widely available for GA including at airports that previously never had instrument approaches available. This life-saving technology has also improved access to GA airports across the country in weather conditions that previously would have precluded operations of any kind. As important and successful as this program has been, it is highly unlikely that an airline-driven and funded ATC system would have ever fielded this efficiency driving and safety enhancing technology.

These are past and current examples of where an ATC system that is governed by private enterprise would be unlikely to allocate resources in a manner that is in the best interest of all users of the NAS and in the best interest of the nation as a whole. Profit motive and provincial interests will dominate a board where not all board members are created equal. Economic self-interest will necessarily trump the greater good without an impartial federal agency and congressional oversight whose interest is in meeting the needs of all users of the system. Modernization under the FAA may not be perfect and perhaps in hindsight could have been done better, but it is happening and doing so at a pace ahead of industry. In our view a privatized ATC system would not have even undertaken the challenge or initial investment.

#### ***Privatized ATC is Not a Business***

Proponents of ATC privatization tout extensive cost savings and increases in efficiency as a basis for radically changing the system of governance of the ATC system by removing it from the federal government. There is no doubt that this appeals to many who believe strongly in free enterprise and the power of capitalism over government control, and for most things we would tend to agree. But the U.S. air airspace and air traffic system is not a business in the classic sense of the word because it does not exist in a competitive marketplace. In fact, a privatized ATC system more closely resembles a congressionally mandated monopoly managed by private interests, dominated by airlines, but subsidized by the U.S. taxpayer.

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Under this scenario, the ATC corporation would not be run by market discipline for greater efficiency, except when the self-interest of the most economically powerful members of the board stand to gain. Under the proposed governance, fees will be ever escalating or services will be cut to the detriment of some users, most likely those with the least influence on the board, i.e. those who of necessity make the smallest financial contribution to the system. Also standing in the way of true corporate governance and marketplace motives is that fact that the ATC corporation would be a monopoly that all users are forced to rely upon regardless of efficiency or cost. There is no true incentive to be efficient and operate under genuine business principles when there is near limitless opportunity to raise fees to cover costs and no alternative source of service for customers.

This is especially troubling when considering the fact that all existing infrastructure, labor, contracts, agreements, retirement plans and benefits are slated to transfer to the privatized system and remain in place for some time. Such are the promises made to the affected labor unions and federal employees by proponents of the legislation.

There are strikingly conflicting goals and benefits of ATC privatization that are being touted by its proponents. It is a stated goal of the airlines and their supporting elected officials that ATC service costs should be cut and efficiencies increased while at the same time those same proponents are promising to hire more controllers in a privatized system. With all the same labor, infrastructure, and contracts in place as is currently the case under FAA management, it is difficult to fathom that costs can be cut by adding more controllers. At the same time the airlines consistently call for passenger fees and ticket taxes to be lowered. Someone is being duped.

Experience has shown that privatization of national air traffic management services around the world has rarely if ever resulted in reduced costs. The experience in Canada is one of the best and yet when taking all taxes, fees, and charges into account the cost of ATC services increased 50 percent under the transition to Nav Canada. In the U.K., this combination of fees and taxes resulted in a 140 percent increase in cost. Far from cutting costs and improving efficiency, the more likely outcome of privatization in the U.S. is that costs will increase at the same time there is mounting pressure by the airlines to lower passenger fees and taxes. Under this scenario there is but one outcome: services will have to be cut. Under an airline dominated governance system, clearly it would be services for general aviation and rural airports and communities that would be cut first and most often. Few other service cuts would be tolerated by the airlines or their customer base.

#### ***ATC Corporation Open to Unlimited Civil and Tort Liability***

Liability under the current federally managed air traffic system is underwritten by the good faith and credit of the U.S. government which itself enjoys some measure of protection from suit, as do many of its employees. The national shared assumption of liability for the NAS is consistent with running a utility that serves every citizen of the country. This system would be

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radically threatened under the proposed legislation by making the privatized entity fully open to civil and tort liability, able to be sued at will. Consequently, the privatization proposal also requires that the proposed ATC corporation carry insurance to cover near unlimited liability for the entire national airspace system.

When one contemplates liability in the air traffic system the most obvious concern is for a major aircraft accident where ATC is implicated as a causal factor. In an instance such as this, the potential damages awarded could be staggering. But there are actually even greater threats and insidious smaller but more numerous expenses from liability. Imagine the potential liability on a privatized air traffic system stemming from the events of 9/11 such as direct damages from perceived ATC liability from the terrorist acts themselves, to the potential liability from losses incurred due to shut down of the ATC system on the airlines and the prolonged grounding of general aviation. The door is also open to more insidious suits for losses incurred by perceived underperformance such as delays, diversions, or other damages. Also, like any business, the ATC corporation would be open to employee suits for any number of workplace-related grievances of which there are many filed today under government employee policies. Many of these employee grievances today would be tomorrow's lawsuits. Further, there will be the costs associated with suits stemming from vendors, contractors, and other outside interests such as environmental, civic, and labor groups.

It is difficult to fathom what the cost of commercial liability insurance would be to cover all of the potential exposures of the entire national airspace system, air traffic operations, and their employees and contracts. Regardless, insurance represents an entirely new cost to the system in addition to necessary private sector legal representation, court costs, and the like. These new and highly expensive costs will have to be borne by the direct users of the system in the form of new or increased fees and taxes under this proposal.

However, it is unlikely that such comprehensive insurance could be obtained at any price in the commercial insurance marketplace given the near unlimited nature of the liability and the litigious tort system in the U.S. Other countries that do not have a court system as freely accessible and prone to issuing massive settlements and judgements in the tens and hundreds of millions of dollars are perhaps able to insure their privatized or corporatized air traffic management systems. However, this would be nearly impossible in this country. As an example, U.S.-based aircraft manufacturers often cannot obtain liability insurance for their products at any price and are forced self-insure with as much as 30-40 percent of a new aircraft's sales price being set aside to cover future lawsuits. One can only imagine that liability insurance costs and availability for a privatized ATC system would be even worse.

The cost of litigation and/or insurance would be forced upon direct users of the ATC system in the form of new and higher fees rather than spread across all of society that benefits from the NAS directly and indirectly as is the case today. This greatly calls into question the likelihood of cost savings in a privatized system. The federal government has paid out \$225 million for air crash claims alone over the past 10 years, a period when there has not been one single major

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air carrier accident. But as mentioned above, the risk of catastrophic liability losses is sufficiently high that the availability of insurance would be questionable without some form of government subsidized guarantee or backstop. Only in this instance the taxpayer would be on the hook for either subsidizing insurance or bailing out a potentially bankrupt privatized ATC system. The costs of such a backstop or bailout would be orders of magnitude greater in the commercial tort liability arena than would ever be borne by the taxpayer under a federalized ATC system as it exists today.

***ATC System, Too Important to Fail***

The national airspace system and its operational arm of air traffic control is such an integral part of the U.S. economy and an engine of commerce that it is without question too important to fail. The implication is that in the event of mismanagement, serious economic downturn leading to drastically reduced revenue, catastrophic liability losses, or default on loans for failed or poorly executed capital investments, the American taxpayer is going to be on the hook for a massive bailout all the while risking the continued operation and safety of what is arguably one of this nation's most important infrastructures. While loan guarantees have been explicitly written out in this proposed legislation, the reality of "too important to fail" is an implicit federal guarantee. The proposed ATC corporation has an unlimited potential to borrow in the capital markets but limited risk for failure to pay due to what has in other industries been referred to as moral hazard.

This is not unheard of in the experience of privatized air traffic systems. In 2002, the U.K. taxpayers had to bail out their privatized ATC system after revenues plummeted in the wake of drastically reduced international air travel after 9/11. Indeed, during the economic downturn in the U.S. from 2008 to 2013, revenue to the Airport and Airways Trust Fund dropped, requiring a larger contribution from the General Fund to make up the difference. While this was technically not a bailout of the system, it points out the difficulty a privatized ATC system would have in times of economic downturn. The only choice for continued operation would be to dramatically raise fees on already stressed airlines and other aviation businesses or drastically cut services jeopardizing economic recovery, service levels, and potentially safety. This is not an acceptable way to run one of the nation's most safety critical pieces of infrastructure. In the absence of the ability to raise fees and/or cut services, the only option is to seek a government bailout by which point the situation will have become dire.

***Prohibition on Government Loan Guarantees – Cost of Debt Service***

The current proposal for a privatized ATC system is often supported on the basis that such an entity would be able to access the capital markets for NextGen modernization and other system or airport capital costs. Proponents of privatization tout the stability and predictability of capital markets versus the vagaries of the congressional authorization and appropriations processes. While this may be true to a certain degree, investments in nationwide infrastructure projects, especially those with a high degree of political or technological risk, such as NextGen, have

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rarely been accomplished without government loan guarantees. Yet the legislation for ATC privatization explicitly prohibits such loan guarantees.

The closest parallel for tapping capital markets was during the frenzy to build nuclear power plants in the late 1960s and early 1970s. These infrastructure projects represented massive investments in the billions of dollars that also contained high levels of technological and political risk. The capital markets alone would not underwrite these projects and government backed loans were necessary to fund these large infrastructure efforts. NextGen carries similar scale, technology risks, and political risks from those who do not agree with or desire to fund ATC modernization. While some elements of modernization or airport improvements might be able to access the capital markets, it is unlikely that national programs on the scale of wholesale system modernization could be readily funded.

In the event that massive modernization infrastructure investments were able to be funded in the capital markets, such funding would introduce still more new costs to the ATC system that would have to be borne by direct users of the system in the form of interest costs on debt service. Debt service today is carried by the nation as a whole at U.S. Treasury rates and is part of the national debt to the degree that money is borrowed. A privatized ATC system will be required to borrow at commercial rates in the capital market, presumably higher than Treasury rates and the debt serviced solely by the direct users of the system. It is difficult to see how cost to the system would be reduced under such a scenario.

#### ***Compromised Safety Oversight/Duplication of Effort***

Under the existing federally managed air traffic system the FAA has the mandate to ensure safety first and foremost while enhancing efficiency as a secondary priority. We believe this is as it should be for a system as safety critical as the national airspace system. Advocates for privatization argue that safety will continue to be assured because FAA will still hold an arms-length regulatory relationship with the privatized organization. Also at arms-length, though, will be observation and oversight of the day-to-day operations of the system. In effect, FAA will only be able to take action to address safety issues that are reported to it by the privatized entity. This separation from ongoing operations to one of distant oversight can do nothing to improve safety in the system. The regulator will be far removed from the actual operation of the system.

So to ensure safety itself, the newly privatized entity will also have to establish a separate and distinct safety organization within itself. That will result in significant duplication of effort and bureaucracy, with attendant increases in overall cost just to maintain what is already done well today by the FAA. In addition, the separation of safety and efficiency motivations into two entities will lead to distinct cultures that have obvious conflicts with one another. The private entity will be primarily driven to increase revenue and cut costs, while the government in the form of the FAA will become solely interested in safety without accountability for system efficiency. We do not see this as being good for either safety or operational efficiency and attendant costs.



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***Remaining FAA Will Be Substantially Diminished and Harmed***

The national airspace system is more than just air traffic control. It is an intricately interwoven complex system that involves not only airspace and traffic management services but also aircraft, airmen, safety oversight and regulation, medical certification, continued airworthiness and maintenance, meteorology, charting, and a host of curbside services performed by the FAA to keep the system moving. These various functions are far more intertwined and interdependent than most outside observers could ever appreciate.

Removing ATC and other operations of the National Airspace System from the FAA will emasculate the agency leaving many functions disjointed and unaccounted for. Further, carving out ATC from the FAA will dramatically reduce the agency's relative importance leaving it more vulnerable than ever to continued congressional funding difficulties and budget cuts. In the absence of the national imperative for a functioning efficient air traffic system, the FAA's other critical safety and service functions will dramatically shrink in importance in the eyes of Congress and the public.

The FAA performs many functions beyond air traffic services upon which the U.S. economy and commerce are heavily dependent. Airmen and aircraft certification services are crucial to keeping the aviation system moving and for aircraft manufacturers to remain in business and stay competitive. With an emasculated FAA no longer funded by the Airport and Airways Trust Fund and even more reliant upon General Fund contributions so much a part of the privatization debate today, pressure will continually mount for a user fee-based system of self-funding for certification and other services similar to the disastrous system in place in Europe today. This is something that EAA and most of the aviation industry is deeply opposed to. The net result would likely be extremely disruptive to aviation businesses and the aviation community as a whole outside of air traffic control.

***DOD Control of the NAS in Times of War or National Emergency***

On the surface, turning control of the national airspace system and air traffic services over to the Secretary of Defense in times of war or national emergency as proposed in this legislation seems like a logical thing to do, given that the NAS would be placed into the hands of private enterprise under H.R. 4441. However, direct experience in the post-9/11 period has shown how disastrous to the future of aviation in this country that would have been had this proposal been in place at that time.

The national airspace system is the property of the citizens of the United States. The FAA has been charged by Congress with the mission of administering the safe and efficient use of that national asset for the benefit of the nation. That includes facilitating commerce, interstate transportation, and freedom of personal movement. After the tragic events of 9/11 the FAA worked hand-in-hand with the national defense and security establishment in the

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unprecedented move to shut down the NAS and ground all flights in the country. This was done efficiently and effectively despite having never been attempted before. While the nation's airspace remained shut down entirely for three days, at no time did the civilian arm of the federal government (FAA) relinquish its authority and "ownership" of the airspace to the Department of Defense (DOD) or any of the other dozens of security and defense agencies working together at the National Security Council (NSC) to ensure the security of the nation.

For the sake of the long-term health of aviation in this country, FAA retention of its authority over airspace and air traffic control, combined with its mandate to facilitate commerce and interstate travel, proved to be a most fortuitous happenstance. As days stretched into weeks following 9/11, the major air carriers were permitted to operate once again but general aviation remained largely shut down, particularly in the vicinity of major metropolitan areas where a new class of airspace called Enhanced Class B fundamentally kept the majority of general aviation aircraft grounded and unable to operate in the most traveled airspace in the country. The defense and security interests at the NSC were absolutely opposed to letting general aviation, including most non-scheduled commercial operations, fly anywhere within 30 miles of any major city, and at one point proposed to prohibit any flights within 150 miles of the nation's capital without first passing through security portal airports. Indeed, those discussions began at a radius of 300 miles. These restrictions lasted for weeks and some stretched on for months.

The only voice of reason at the NSC in these discussions was the FAA. In fact, the agency's persistent efforts to reopen the airspace to general aviation and small commercial operators was met with such violent opposition by the defense and security establishment as to be openly branded by some as traitorous. General aviation owes its existence as we know it today to the dogged persistence of the then FAA leadership in maintaining their authority over the airspace and sticking to their mandate of facilitating commerce and freedom of movement. Had the national airspace system and air traffic control been blindly handed over to the Secretary of Defense at that time there is no question whatsoever that there would be no recognizable general aviation as we know it today.

Having lived through the painful prolonged period post 9/11 of being grounded and fighting tooth and nail against near unanimous opposition to letting personal and small commercial aircraft fly, EAA is opposed in the strongest terms to separating the control, stewardship and authority over the national airspace system from the FAA. Under no circumstances should that authority be transferred out of civilian hands to the Department of Defense or any other government agency with a sole mandate for security or national defense. The result after 9/11 would have been tantamount to the implementation of martial law against general aviation. Without the authority and perseverance of the civilian FAA, it would likely still be in place today as it is in the nation's capital where members of the NSC partially had their way.

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***Protracted Period of Budget, Operational, and Program Management Disruption***

Proponents of privatization promise no disruption of “core ATC operations” on the basis that all existing facilities and personnel would transfer to the private entity. This demonstrates a shallow understanding of the complexity of the NAS and the myriad contracts, programs, and services that do not fall into the category of “core ATC operations” that would likely be disrupted and perhaps even jeopardized by such a transition. Currently there are considerable research and development efforts underway at the FAA, many of them crucial to safety or the long-term health of the aviation system, that do not fall under “core ATC operations” nor would likely be relevant to any privately funded ATC system.

An example of this is the Piston Aviation Fuels Initiative (PAFI) that has leveraged considerable FAA, petroleum and aviation industry expertise and resources to advance the prospect of developing, and most importantly authorizing the fleet-wide use of, novel new high octane unleaded fuels for general aviation. This program evolved out of the recognition that without pivotal government involvement in the evaluation and approval process, aviation would never be able to make a wholesale transition to unleaded fuels, something that is in the best interest of the nation. PAFI is a program universally lauded and supported, and is an extremely high performing effort. Yet because of the way the FAA budget process works this programs’ R&D funds are allocated through the NextGen budget. This is but one example among potentially hundreds that would be significantly disrupted or even unfunded despite congressional line item authorization in the move from FAA to a privatized ATC system. There is no question that private ATC would have no interest in unleaded fuel development, nor should it, but the point is that the move of NextGen funding to a private entity would disrupt or even discontinue a program vital to the future of general aviation. This is but one simple example of the complex web of funding, program management, and accountability, that will be seriously disrupted under this legislation many times over.

The Aviation Innovation, Reform and Reauthorization (AIRR) Act of 2016, or H.R. 4441, proposes a three-year phase out of FAA involvement in air traffic operations and the phase in of privatized operations and the implementation of user fees to fund the system. This three-year period is bound to be fraught with peril and disruption. But it is what is proposed in year four that should really attract the attention of all, including the labor unions representing federal employees who have been promised that jobs and operational personnel will not change during the transition. In the fourth year after passage of the Act, the privatized ATC corporation is authorized to readjust bargaining agreements to a “non-government setting.” The corporation is also authorized to adjust user fees, employment agreements, and operational service levels, indicating that there is likely to be a long period of resizing and reprioritizing with attendant service disruption ahead. If labor unions become discontent with the readjusted bargaining agreements or resizing or reprioritizing of the ATC system, under a privatized system one has to assume that they have the authority to strike, paralyzing the nation once again as the controller strike did in 1981. This is in no way good for the nation or its economy.

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### **Funding Concerns Do Not Justify Privatization – There Are Far Simpler Solutions**

Inconsistency and instability of FAA funding is cited most often as the primary justification for privatization of the nation's air traffic and national airspace system. The belief seems to be that if the nation simply places the entire system in the hands of private enterprise all of the financial ills associated with congressional funding and FAA management of ATC modernization will go away despite the fact that all the people and facilities will remain the same. But as we have mentioned throughout this testimony, privatization introduces new funding risks that in many instances greatly eclipse those the supporters of H.R. 4441 are trying to solve. It also introduces operational, organizational, and safety uncertainty and risk throughout the system at every level.

EAA believes that if Congress is actually serious about addressing concerns over the stability and predictability of funding for FAA operations and system modernization, there are a handful of things that can be achieved with little or no disruption to the aviation industry or national airspace system. Key among these changes is the need to fundamentally alter the way money flows from the users who already pay for the vast majority of the national airspace system and the operating budget of the FAA today to the FAA itself in a reliable and consistent manner. There is no real shortage of funds. In Fiscal Year 2015, direct users of the system funded 92.77 percent of the airport and airways system and the operating budget of the FAA. That left 7.23 percent to be funded from the General Fund. Yet the entire amount is subject to the congressional authorization and appropriations processes and the threats they pose to stability.

We maintain that Congress should ensure that the money in the Airport and Airway Trust Fund be walled off for its intended purpose by statute and that the revenue in the AATF should be transferred to the FAA in its entirety in the form of an automatic annual appropriation. Undertaking this relatively simple legislative initiative would ensure that today in excess of 90 percent of the FAA budget would automatically be funded and not be subject to legislative delays, budget cuts, government shut-down, or sequestration. The Airport and Airways Trust Fund was created so that direct users of the system could fund capital improvements and a portion of the FAA's operating budget and it has done so admirably to date including funding an ever larger percentage of the FAA operating budget over the years. There is no reason why these funds collected from direct users of the system should be held hostage by Congress and withheld from the FAA in the authorization and appropriations process.

*EAA urges Congress to undertake legislation to wall off the Airport and Airways Trust Fund for its intended purpose and implement a process for automatic annual appropriation of AATF funds to the FAA thus ensuring continued and predictable ongoing operations and capital investment.*

In addition, EAA believes that it is appropriate to continue the General Fund contribution for the operation of the FAA in that such contribution represents the benefit of the NAS to American society as a whole and also serves as a shock absorber for those periods of economic

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downturn when AATF revenue naturally declines due to reduced air travel and other economic activity. Failure to combine this ongoing General Fund cushion with user derived revenue has been the downfall of privatized ATC systems elsewhere and necessitated expensive bailouts when user fee revenue could not meet the needs of the existing system. General Fund contributions can rationally be expected to be small in periods of economic prosperity when aviation activity and the movement of the public are at their greatest. But in times of serious economic slowdown, it is in the country's best interest to maintain its air traffic system and not attempt to continually upsize and downsize the system based on current economic events. Such efforts will only lead to continual disruption in the system and one that is never scaled for current needs.

EAA maintains that privatizing the U.S. air traffic system or otherwise splitting off from the Federal Aviation Administration would prove disastrous to the long-term survival of general aviation and the overall health of the national airspace system as whole. We believe that the right approach is to ensure funding of the FAA through unfettered access to AATF revenue which today makes up that vast majority of the FAA budget, while at the same time continuing to authorize and appropriate the comparatively small General Fund contribution. Doing so will ensure continued smooth operation of the ATC system, predictable ongoing funding for modernization efforts free from disruption by a chaotic and at times ineffective budget process, while still maintaining congressional oversight, budget authority, and the power of the purse over the FAA. This will address the vast majority of funding concerns while maintaining the safest and most effective air traffic system in the world for the benefit of all American citizens that we enjoy today.

We thank you for your time and consideration of this matter vital to general aviation and our nation's interest. We stand ready to answer any questions or address any concerns you may have.

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**Statement for the Record  
 "Review of ATC Reform Proposals"**

**Thomas L. Hendricks**

**President and CEO**

**The National Air Transportation Association**

**February 10, 2016**

Chairman Shuster, Ranking Member DeFazio, members of the Committee, thank you for the opportunity to submit comments for the record on the Committee's review of air traffic control reform. My name is Thomas L. Hendricks and I serve as President and CEO of the National Air Transportation Association (NATA).

NATA represents the interests of the general aviation business community before the Congress as well as federal, state and local government agencies. Representing nearly 2,300 aviation businesses, NATA's member companies provide a broad range of services to general aviation, the airlines and the military. Our members range in size from large companies with international presence to smaller, single-location operators that depend exclusively on general aviation for their livelihood. Smaller companies account for the majority of NATA's membership and most of our members have fewer than 40 employees and are designated as small businesses by the U.S. Small Business Administration.

NATA deeply appreciates the time and deliberation devoted to the development of H.R. 4441, the Aviation Innovation, Reform, and Reauthorization (AIRR) Act. As a result of the Committee's efforts to solicit stakeholder input, the legislation contains numerous provisions that will allow the Federal Aviation Administration to pursue its critical safety mission more effectively and efficiently. While we disagree with one policy prescription, it does not take away from the fact that the process undertaken by the Committee will surely result in numerous safety benefits to aviation.

**Focused Policy Initiatives Will Better Achieve the Committee's Aims**

We understand the major issue the Committee considered in the development of this legislation is whether and how to alter the FAA's organization and funding stream. This is a healthy and certainly appropriate discussion in light of the recent sequesters, government shutdown and criticisms of the FAA's modernization execution. While we salute the Chairman's desire for transformational change at the agency, we believe that more focused policy initiatives will better achieve the Committee's aims. It is

NATA's view that the creation of a federally chartered, not-for-profit air traffic control corporation will erode system safety, stifle the deployment of important NextGen technology and saddle the traveling public with ever increasing travel costs – which will likely be passed along in a manner that will make it harder, not easier, to see.

We also find this proposed policy prescription somewhat bewildering to explain as it is outside of other recent congressional action to bring certainty to aviation businesses. The duration of the last FAA reauthorization provided a much needed strategic benefit in that its provisions improved regulatory consistency and certification reform and provided aviation businesses with much sought confidence to make important business investment decisions. Congress built on this progress last year, providing similar long-term certainty for investment decisions by approving a multi-year extension of bonus depreciation and a permanent increase in Section 179 expensing regulations.

NATA made it clear from the outset of the legislation's development that we cannot support "leap of faith" proposals that place the fate of any segment of general aviation — in this case air charter and other commercial general aviation activities — in the hands of a yet to be determined board of directors — especially given the fact this segment of general aviation is denied a voice in the Corporation's proposed governance. One must ask why most major airlines are so aggressive in their support of this proposal? Simply put, though the fee structure of the proposed Corporation is yet to be defined, and will be defined by the Corporation itself, the Corporation's proposed leadership structure provides major airlines the confidence they seek to control a future air traffic control system primarily for their benefit. Absent Congressional oversight, this proposed construct risks unconstrained cost increases being passed along to other users of the system.

#### **An Academic, Not Operational View Of Reality**

Many of the principal supporters of this proposal, largely academics and economists, sorely lack the necessary operational experience and expertise required to develop a fully integrated perspective of the "puts and takes" critical to ensuring a balanced approach to safeguarding the unprecedented level of safety performance that is the hallmark of the U.S. air traffic control system.

Among other things, this lack of real world depth of experience blithely leads to simplistic pronouncements such as "a blip is just a blip" when referring to aircraft displayed on air traffic control systems and similarly, that the U.S. is "using World War II technology" as the foundation for our air traffic control system. These views are simplistic, uninformed and clearly point to an academic, not operational view of reality.

To be clear, the incredibly robust U.S. air traffic control system is modern, highly-integrated and provides for an extremely high level of continuity in the face of disruptive meteorological and technological challenges. This system was designed with the predominant users of the system in mind – major airlines. One must only visit state-of-the-art FAA facilities like the Atlanta Terminal Radar Approach Control Facility, the FAA Command Center in Warrenton, Virginia, the FAA William J. Hughes Technical Center in New Jersey

and others to realize that these extremely robust and modern facilities leave “World War II” technology in the dust.

These facilities, along with the Enroute Automation Modernization-equipped high altitude enroute air traffic control centers, are already fusing multiple sensor sources, including radar, Global Positioning System inputs and other sources into these highly-integrated systems. Additionally, general and business aviation aircraft do not require technologies such as Precision Runway Monitoring for closely-spaced instrument approaches at major airports. Clearly, much of the technology at work in these facilities is simply not needed for the incremental impact of general and business aviation aircraft on the air traffic control system.

#### **Too Big to Fail**

We understand the idea of creating an air traffic control corporation is appealing to many as a way to bring private sector efficiency to government. While that is a worthy goal, our nation’s ATC system is a national asset that we should not corporatize any more than we should spin-off another national asset that also develops and deploys cutting-edge technology – the Department of Defense. Air traffic control is a monopoly and the governance of this proposed Corporation is already precooked in this legislation to pick its winners and losers, leaving general aviation and the consumer largely on the outside looking in.

Let us also dispel the myth that by federally chartering an air traffic control corporation the U.S. government somehow supervises it. While these corporations are required to provide annual independent audits and reports to Congress, controversies surrounding such corporations often come down to issues of managerial accountability and fiduciary responsibility. Examples include Fannie Mae, Freddie Mac, the Red Cross and the Smithsonian. It is notable that each of these federally chartered institutions have required in their history some form of government intervention.

Instead, what the proposed legislation creates is an entity too big to fail. As a monopoly provider, the United State government is hardly going to let a critical element of its national economy go out of business. In fact, in another major effort to corporatize air traffic control in Great Britain, the corporation found itself in over its head. There was only one place to go for a bailout – the British government.

A major benefit of the current authorization/appropriations process is the FAA’s accountability to the taxpayer. One cannot think of any government agency in recent history that does not desire funding without strings from Congress, nor an era where government spending was not described as “constrained.” The proposed legislation envisions retaining the FAA’s safety, regulatory and airport functions within the budgetary and oversight functions of Congress. If Congress desires, for example, to remove “politicization” from the FAA, retaining the Corporation’s regulatory body under the congressional budget process hardly removes the Corporation from Congress’ grip. Wouldn’t it be easier to provide the entire agency with a clear, unambiguous exemption from the impacts of sequestration and government shutdowns?



**It's More Than User Fees**

Once our nation commits to this path, there is no turning back. To be clear, the general aviation community has very real and long-standing concerns about foreign air traffic control models, which go well beyond the user fee issue. Congress should consider and discuss the potential risks to America's general aviation community, including the investment and jobs created by the members of NATA. In 2015, eight general aviation associations, including NATA, unveiled a new industry-wide study detailing the economic contributions of general aviation to the nation. That study, conducted by PricewaterhouseCoopers, determined that general aviation supports 1.1 million total jobs and supplies \$219 billion in total economic output in the United States. Reform of the FAA's organizational and management structures and funding could put that investment and those jobs at risk.

NATA urges the Committee to be very wary of proposals that purport to be all things to all people. General aviation often hears from proponents this Corporation will be so efficient that it will be able to do inefficient things, including deploying and maintaining cutting-edge equipment to rural America. Not unlike the idea that NATA's small businesses (or any business) can accept a future that includes undefined costs to be determined by the major airlines, this is another "leap of faith" that we cannot support.

**Going Forward**

Those who have had the opportunity to fly passenger aircraft all over the world can confidently state that there is no air traffic control system in the world that compares with ours in terms of quality, complexity, safety and access. Further, nowhere else in the world comes close to the challenges of safely and routinely managing the uniquely complex airspace in the U.S. Northeast corridor.

NATA is certainly not an apologist for the FAA, we should support the injection of more private sector practices into the FAA. Two reports from the Department of Transportation's Inspector General offer both perspective and policy prescriptions we hope the Committee will consider in lieu of establishing an air traffic control corporation.

In September, the DOT IG released a report comparing the U.S. air traffic control system with the air navigation service providers of Canada, France, Germany and the United Kingdom. The report clearly demonstrates these international air traffic control systems are much smaller and less complex than our own, yet another validation of why Congress should proceed very cautiously in contemplating massive structural changes to America's air traffic control, acknowledged as the world's safest, largest and most complex.

Most importantly, the IG also concluded these foreign air traffic control providers, unlike the FAA, "do not embark on large, comprehensive modernization efforts such as NextGen transformational programs or conduct extensive aviation research and development." Instead, as the report noted, these air traffic providers rely on small, incremental changes using off-the-shelf technology. Europe's efforts to orchestrate a multi-national modernization effort similar to the FAA's, called SESAR, is producing mixed results and

limited progress.

But just as important, the report highlights the risks these models pose to continued American leadership in aviation. There is no facility in Europe or Canada dedicated to aviation technology research such as the FAA's world-leading William J. Hughes Technical Center in New Jersey. Further, Europe and Canada lack sophisticated policy mechanisms like the NextGen Advisory Committee (NAC) that gather America's aviation thought leaders together to provide highly valuable advice to policymakers. This effort is already helping transform our air traffic control system for both today and tomorrow. Interestingly, Europeans are key participants on the NAC. No other country or region in the world is providing this degree of aviation leadership to help guide this massive modernization effort.

Just last month the DOT IG reviewed FAA's progress on NextGen. Significantly, the IG did not recommend separation of the agency's air traffic control and safety functions. It did however make several recommendations to improve FAA's management of major acquisitions to better meet the goals of its reforms. We understand the FAA concurred with its recommendations and hope the Committee will review them and provide whatever additional authorities are required to affect their priority implementation.

Chairman Shuster, Ranking Member DeFazio, members of the Committee, thank you for your consideration of our views. While maintaining the status quo risks our nation's supremacy in aviation, it is equally true that radical change to the FAA's organizational structure and funding poses even greater risks, including to the safe and stable nature of the world's best air traffic control system. NATA understands and respects the process the Committee undertook. We appreciate that process resulted in a bill that, in many respects, will fulfill the goal of helping the FAA in its important safety mission. NATA regrets that we cannot support a bill that however well intended, will not in its current form, achieve the policy goals it was created to address.

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**Congress of the United States**  
**House of Representatives**  
**Committee on Appropriations**  
**Washington, DC 20515-6015**

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February 1, 2016

The Honorable Paul Ryan  
 Speaker  
 U.S. House of Representatives  
 Washington, DC 20515

The Honorable Kevin McCarthy  
 Majority Leader  
 U.S. House of Representatives  
 Washington, DC 20515

The Honorable Nancy Pelosi  
 Minority Leader  
 U.S. House of Representatives  
 Washington, DC 20515

The Honorable Steny Hoyer  
 Minority Whip  
 U.S. House of Representatives  
 Washington, DC 20515

Dear Speaker Ryan, Leader McCarthy, Leader Pelosi, and Mr. Hoyer:

As the House of Representatives considers reauthorization of the Federal Aviation Administration (FAA), we write to inform you we will not support legislation that would create a separate air traffic control organization outside the FAA and removed from the annual appropriations process. The annual oversight and funding role of Congress is critical to providing individual citizens and communities a voice, through their elected representatives, in the operation of our nation's air traffic system.

The United States has the largest, most complex air traffic system in the world, with a record level of safety. Congress plays a key role in providing oversight for the FAA to ensure the safe and efficient operation of the air traffic control system in the national interest. We are responsible not just to safeguard the day-to-day operations of air traffic, but also to ensure that our communities – urban, suburban, and rural – have fair and equitable access to air service.


We do not believe that creating a separate air traffic entity, removed from congressional oversight, will advance efforts to modernize air traffic control. The Committee on Appropriations has a proven record of providing robust funding to advance air traffic technologies in the national interest. While FAA can and should improve and accelerate the development of modernized air traffic systems, we do not believe the solution is less oversight and less accountability.

Further, we have concerns about any proposal that would transfer all decisions on financial investments and fees – on airlines and the public – to an independent entity that is not accountable to the people we serve. This would be an abdication of our duties to the American people as Members of Congress.

Finally, there are unique national security interests for our airspace that could suffer from reduced congressional oversight. If the air traffic control system were governed by a new and separate entity, we would have serious concerns about the chain of command in a national emergency and the ability of our defense and law enforcement agencies to have unfettered access to the national airspace.

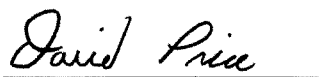
We applaud any legislative effort to reform the FAA so that it can more quickly and efficiently modernize air traffic systems, better serve the public, and serve as a more effective partner with the U.S. aerospace industry. We cannot, however, support legislation that places air traffic control functions on autopilot and limits the ability of Congress to provide the annual oversight of our air traffic control system that our citizens and our communities deserve.

Sincerely,

  
Harold Rogers, Chairman  
Committee on Appropriations

  
Nita Lowey, Ranking Member  
Committee on Appropriations

  
Mario Diaz-Balart, Chairman  
Subcommittee on Transportation,  
Housing and Urban Development,  
and Related Agencies  
Committee on Appropriations

  
David Price, Ranking Member  
Subcommittee on Transportation,  
Housing and Urban Development,  
and Related Agencies  
Committee on Appropriations

THAD COCHRAN, MISSISSIPPI, CHAIRMAN

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STEVE DAINES, MONTANA	

BRUCE EVANS, STAFF DIRECTOR  
CHARLES E. KUTTER, MINORITY STAFF DIRECTOR

**United States Senate**  
COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-6025  
<http://appropriations.senate.gov>

January 27, 2016

The Honorable John Thune  
Chairman  
Committee on Commerce, Science,  
and Transportation  
United States Senate  
Washington, DC 20510

The Honorable Bill Nelson  
Ranking Member  
Committee on Commerce, Science,  
and Transportation  
United States Senate  
Washington, DC 20510

Dear Chairman Thune and Ranking Member Nelson:

We are writing to express our opposition to legislation that would separate the air traffic control function of the Federal Aviation Administration (FAA) from the rest of the agency and remove that function from the congressional appropriations process.

It has been suggested that the part of the FAA that currently manages air traffic – the Air Traffic Organization (ATO) – could become an independent government agency, a nonprofit organization, or even a for-profit firm. These proposals have two fundamental problems: they break apart the FAA, and they diminish the ability of Congress to oversee the aviation system. The United States is a world leader in aviation, with the largest, most complex air transportation system in the world. We are also a world leader in aviation safety. Commercial aviation fatalities are at historic lows, yet the FAA continues to innovate and improve its approach to safety oversight. It does not make sense to break apart the FAA, an essential part of our success in aviation.

Furthermore, the public would not be well served by exempting any part of the FAA from annual congressional oversight. The annual appropriations process provides the oversight of agency resources that is necessary to ensure accountability for program performance and a sustained focus on aviation safety. Congressional oversight also ensures that the FAA maintains a system that works across the aviation industry, including general aviation and small and rural communities as well as commercial airlines and large metropolitan cities.

The current authorization for the FAA's programs activities expires at the end of March. We appreciate the importance of your work to ensure that the next authorization supports aviation safety and addresses important issues such as the modernization of our air traffic control system, the timely certification of aviation products, and the integration of unmanned aerial systems into our national airspace. We believe, however, that these efforts

would be undermined if the reauthorization legislation breaks up the FAA or puts any part of agency funding on autopilot.

Sincerely,



Thad Cochran, Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510



Barbara Mikulski, Vice Chairwoman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510



Susan M. Collins, Chairman  
Subcommittee on Transportation,  
Housing and Urban Development  
and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510



Jack Reed, Ranking Member  
Subcommittee on Transportation,  
Housing and Urban Development  
and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510



### **Americans Against Air Traffic Control Privatization Petition**

Signatures: 115,000

Groups: American Family Voices, Courage Campaign, Crooks and Liars  
Daily Kos, Deluge, People Demanding Action, Progressive Congress,  
Progressive Democrats of America, RootsAction.org, Watchdog.net

### **Signature needed: Tell Congress not to privatize our air traffic control system**

To Chairman Shuster, Ranking Member DeFazio, and the members of the House Transportation and Infrastructure Committee:

The United States has one of the safest air traffic control systems in the world. The FAA is currently working to implement new technologies that will make air travel even safer and more efficient. While all programs can be improved, we urge you not to dismantle and privatize an air traffic control system that is not broken.

Our nation can't afford to privatize our air traffic control system. Were we to do so, the result could be more consolidation and power for airlines, less choice and more expensive travel for consumers, loss of good jobs among air traffic controllers and other aviation workers, and more cuts at rural airports. Privatizing air traffic control and turning control over to an unelected board of airline interests, would further consolidate airline power and be harmful to consumers and small towns.

Advocates for privatization claim to be following the examples of the UK and Canada - - but since the UK privatized its air traffic system, 12 percent of jobs were cut AND the new fees and existing taxes on every ticket increased by 140%. In Canada, 14 percent of jobs were cut and the total new fees and taxes increased by 53%. In fact, many privatization initiatives increase costs to consumers, while simultaneously laying off workers without cause. This is not a way to grow our economy or generate broadly shared prosperity.

Losing democratic oversight over this part of our national transportation system means that a new monopoly corporation outside of the Federal government will decide how much to charge for air traffic control services and how to allocate resources. This could seriously disadvantage rural communities and small towns by increasing costs and limiting access.

Instead of privatizing air traffic control, we believe that Congress should create a pathway to allow the FAA to move forward with long-term capital planning without relinquishing Congressional oversight or allowing a new corporate monopoly run by the airlines to slash air traffic control jobs.

The cost of privatization is simply too high. It is bad for workers, bad for passengers, and harmful to smaller and rural communities.

Sincerely,

American Family Voices  
 Courage Campaign  
 Crooks and Liars  
 Daily Kos  
 Deluge  
 People Demanding Action  
 Progressive Congress  
 Progressive Democrats of America  
 RootsAction.org  
 Watchdog.net





Release #16.02  
February 3, 2016

### **ALPA Calls Proposed FAA Reauthorization Bill Unsafe and Unfair**

WASHINGTON, D.C. — The Air Line Pilots Association, Int'l (ALPA) reviewed the proposed Federal Aviation Administration (FAA) reauthorization unveiled today and determined that the legislation, as currently drafted, does not maintain the current level of aviation safety in the United States.

"After months of working with key officials to ensure this crucial legislation focuses on vital safety measures, we are disappointed to see that this bill does not advance aviation safety in our country," said Capt. Tim Canoll, ALPA's president. "As the world's largest nongovernmental aviation safety organization, we have offered our experience as primary users of this system and worked tirelessly to educate Capitol Hill on why safety must be paramount moving forward."

As drafted, the bill does not address the serious safety risks presented by the unregulated carriage of lithium batteries. It also creates an unfair funding system for the new air traffic organization, and fails to protect access to the cockpit through mandatory physically installed secondary barriers. Instead, the proposed legislation actually degrades safety by undercutting the existing regulations regarding medical certification for general aviation pilots.

ALPA called the reauthorization proposal a "missed opportunity" to properly and appropriately regulate lithium batteries. "Last week, the international community irrefutably acknowledged existing evidence demonstrating that lithium batteries pose a threat to safe air operations. As a result, they recommended moving forward on the first phase in a long-term plan that allows for the safe transport of lithium batteries. However, today's proposed legislation refuses to recognize the safety risk inherent in the bulk shipment of lithium batteries on passenger and cargo aircraft," added Canoll.

Capt. Canoll also commented that, "After working with the Senate to pass a legislative solution that ensures we continue to keep unnecessary risks away from one of the safest and most complex aviation systems in the world, today's bill actually degrades safety by allowing pilots to self-certify their medical qualifications, which will result in unfit pilots gaining unfettered access into airspace shared with the flying public and shippers.

In reviewing the long-awaited proposal for forming a nonprofit air traffic control (ATC) organization, ALPA's initial analysis is that while the structure outlined in the proposal provides appropriate safety measures for the transition and framework for an independent air traffic organization, the financing mechanism is inconsistent with ALPA policy that calls on *all* users operating in the national air space pay a fair share. This version of a new ATC would require that commercial air carriers shoulder the financial responsibility of supporting the operation, instead of having all users pay into the system.

Canoll concluded, "As aviation stakeholders, we have a shared responsibility to advance safety and not move in the opposite direction. While we were pleased to see the committee preserve the safety advancements in training for first officers and flight and duty time for passenger pilots, it is unfortunate this FAA reauthorization proposal misses the mark on so many other levels.

"As the global leader in aviation safety for over eight decades, we will continue our work on improving this bill in order to ensure that our members and the traveling public can continue to fly with confidence in the safest mode of mass transportation in history.

"Moving forward, we will redouble our efforts with our partners in Congress to usher a safe bill through to the finish. It is imperative that we focus our efforts on providing a FAA reauthorization bill that provides long-term, reliable funding to safely operate our air transportation system and execute the next-generation air traffic reforms that will bring additional safety and efficiency to our system," concluded Canoll.

Founded in 1931, ALPA is the world's largest pilot union, representing more than 52,000 pilots at 30 airlines in the United States and Canada. Visit the ALPA website at [www.alpa.org](http://www.alpa.org) or follow us on Twitter @WeAreALPA.

###

CONTACT: ALPA Media, 703-481-4440 or [Media@alpa.org](mailto:Media@alpa.org)

Stay connected with ALPA





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Eric Seide  
Harrisburg, PA  
Mary E. Sullivan  
Harrisburg, PA  
Braulio Torres  
Harrisburg, PA  
Janette D. Wynn  
Harrisburg, PA

June 24, 2015

Dear Representative:

On behalf of the 1.6 million members of the American Federation of State, County and Municipal Employees (AFSCME), including the thousands of AFSCME-represented Federal Aviation Administration (FAA) employees, I am writing to express our views regarding FAA reform. In particular, AFSCME is very concerned about proposals to privatize the work currently performed by dedicated public servants in the Air Traffic Control Organization (ATO).

The most significant issue facing the FAA isn't operational control; it's the lack of stable, secure, and long-term funding. Without fiscal certainty it is impossible for the agency to properly implement the Next Generation Air Transportation System (NextGen), as well as maintain and improve facilities. Over the past four years instead of stable funding the agency has faced substantial uncertainty. Operating under multiple continuing resolutions has hindered the agency's long-term planning and implementation. The FAA has shouldered sequestration cuts as well as two shutdowns – one agency-wide, one government-wide – since 2011. And, just a month ago, the House's fiscal year (FY) 2016 Transportation, Housing and Urban Development Appropriations bill made a \$100 million cut to the FAA's capital fund. All of these burdens have proven to be detrimental to the agency at headquarters and around the country. Further, the uncertainty has increased restoration times, caused delays in getting needed parts and equipment, postponed modernization, resulted in missed or deferred preventative maintenance, and precipitated agency hiring freezes and furloughs.

Separating the ATO functions from the FAA and organizing any of its functions under a non-government entity is not the solution to funding problems, not will it further the agency's modernization efforts. Such a move would only add to the FAA's uncertainty. The FAA must maintain its current structure to protect national aviation safety and ensure operational control and oversight. It is also critical that all experienced and highly skilled FAA employees remain federal workers and continue to receive the benefits and worker protections of other federal employees. AFSCME opposes any and all efforts to privatize any function within the FAA.

Sincerely,

Scott Frey  
Director of Federal Government Affairs

SF:KS:rf

American Federation of State, County and Municipal Employees, AFL-CIO  
TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB [www.afscme.org](http://www.afscme.org) 1625 I Street, NW, Washington, DC 20036-5687

April 22, 2015

The Honorable Bill Shuster  
Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2268 Rayburn House Office Building  
Washington, DC 20515

The Honorable Peter DeFazio  
Ranking Member  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2134 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank LoBiondo  
Chairman  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2427 Rayburn House Office Building  
Washington, DC 20515

The Honorable Rick Larsen  
Ranking Member  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2113 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Shuster, Ranking Member DeFazio, Chairman LoBiondo and Ranking Member Larsen:

On behalf of the thousands of Federal Aviation Administration (FAA) employees represented by our organizations, we are writing to express our viewpoint regarding recent discussions related to reform of the FAA, specifically the opinions brought forth at the March 24, 2015, House Aviation Subcommittee hearing titled "Options for FAA Air Traffic Control Reform."

As representatives of FAA employees, we firmly believe that the most significant issue currently facing the agency is the lack of a stable and secure funding stream. The National Airspace System (NAS), which FAA employees design, install, operate and maintain, safely flies two million passengers to and from their destinations on 87,000 flights per day, with the commercial aviation industry contributing more than \$1.3 trillion to the U.S. economy each year in addition to providing over 10 million jobs. It is imperative that such a major aspect of this country's economy be adequately and consistently funded.

There is no debate that sequestration, operating under multiple continuing resolutions and the recent government shutdown resulted in negative impacts that resonated nationwide. These included open watches, increased restoration times, delays in getting needed parts and equipment, modernization delays, missed or deferred preventative maintenance, reduced redundancy, and agency hiring freezes and furloughs. According to an estimate from Standard & Poor's, the government shutdown cost the economy \$24 billion, including about \$3.1 billion in lost government services. The FAA is just now recovering from the impacts of the 2013 sequestration. This is a situation that should not be repeated.


However, we do not agree that a massive change to the FAA's structure is the solution to the funding problem. Instead, we urge lawmakers to develop a plan that addresses the FAA's need for stable funding free of the threat of sequestration. In addition, we do not believe that the Air Traffic Organization (ATO) should be separated from the other lines of business within the FAA because the ATO is inextricably intertwined with the agency's other functional divisions. For example, communication and sharing of information and resources within the agency, including between the ATO and the Office of Aviation Safety (AVS), is essential to allow the agency to seamlessly perform work necessary to ensure safety every step of the way. The FAA must remain one cohesive unit in order to allow all FAA employees to continue working together for the benefit of the world's foremost aviation system.

While we recognize that FAA funding must be addressed and that this may involve some restructuring, we are opposed to privatization of any of the functions or services within the FAA, including the ATO, either through a for-profit or not-for-profit company. As representatives of the employees who ensure the safety and efficiency of the world's largest aviation system, we ask for your support in ensuring that all FAA employees remain employees of the federal government. The work performed by the highly skilled and dedicated employees at the FAA is no doubt a function intimately related to the public interest. We stand ready to participate in future conversations related to FAA reform in order to allow these federal employees to continue doing the work they do every day to keep this country's aviation system safe.

Sincerely,




J. David Cox Sr.  
National President  
American Federation of Government Employees  
(AFGE)



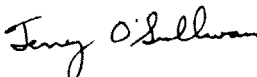
William R. Dougan  
National President  
National Federation of Federal Employees  
(NFFE)



Lee Saunders  
President  
American Federation of State, County &  
Municipal Employees (AFSCME)



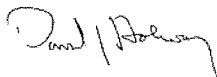
Conley Wicker  
President  
Professional Association of Aeronautical Center  
Employees (PAACE)



Terry O'Sullivan  
General President  
Laborers' International Union of North America  
(LIUNA)



Mike Perrone  
National President  
Professional Aviation Safety Specialists (PASS)



David J. Holway  
National President  
National Association of Government Employees  
(NAGE)



For Immediate Release  
February 3, 2016

Contact: Kelly Murphy  
703-716-0503 / [murphy@raa.org](mailto:murphy@raa.org)

**Regional Airline Association Statement on the Introduction of the Aviation Innovation, Reform, and Reauthorization (AIRR) Act**

*Washington, DC* – Today, the Regional Airline Association, representing 26 North American regional airlines, which operate nearly half of all commercial airline departures in the United States, released the following statement in reaction to the introduction of the Aviation Innovation, Reform, and Reauthorization (AIRR) Act:

"The Regional Airline Association (RAA) opposes the AIRR Act in its current form. We cannot support an ATC entity that leaves an industry that operates 45 percent of the nation's commercial flights without representation in the proposed new corporation.

"This bill places tremendous cost pressure on the regional airline industry while leaving us voiceless in all decisions made under the new ATC corporation. It is particularly concerning that the bill leaves questions about charges and fees unanswered, with variables like the role of weight, distance, or other factors important to regional airlines to be determined by a governance board dominated by mainline air carrier representatives.

"The success of our airlines' mainline partners is critical to our own industry's health," said RAA President Faye Malarkey Black. "However, regional airlines play a very important – and a very distinct – role in providing the nation's air service. Regional airlines must have their own clear voice in this process."

"Without our own voice, regional airlines are left vulnerable to exponential cost increases. Even under projected "best-likely-case" scenarios, early modeling exercises demonstrate massive cost increases for regional airline flights compared to the current tax environment. These cost increases place significant and unfavorable cost pressure on the regional airline industry and stand to further erode air service to small and medium-sized communities across the country.

"Given that regional airlines are the only source of scheduled air service at nearly three-quarters of our nation's airports, this proposal has the potential to wreak havoc on rural America.

"We are committed to a safe, efficient, and accountable ATC system. Therefore, the Regional Airline Association will continue to work with Chairman Shuster, Ranking Member DeFazio, and all Members of Congress to put together a bill that makes economic sense while increasing safety and delivering efficiencies for all stakeholders."

**About RAA**

The Regional Airline Association (RAA) provides a unified voice of advocacy for North American regional airlines aimed at promoting a safe, reliable, and robust regional airline industry. The RAA serves as an important support network connecting regional airlines, industry business partners, and government regulators in bolstering the industry; as well as promoting regional airline interests in a changing business and policy environment. With more than 11,200 regional airline flights every day, regional airlines operate 45 percent of the nation's commercial schedule.

###



February 5, 2016

The Honorable Paul Ryan  
Speaker of the House  
United States House of Representatives  
Washington D.C. 20515

The Honorable Nancy Pelosi  
Minority Leader  
United States House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
Majority Leader  
United States House of Representatives  
Washington, DC 20515

The Honorable Steny Hoyer  
Minority Whip  
United States House of Representatives  
Washington, DC 20515

Dear Speaker Ryan, Leader McCarthy, Leader Pelosi, Mr. Scalise, and Mr. Hoyer:

Congress is about to consider legislation to privatize our air traffic control system.

We write to express our grave concern about any proposals which would take authority over our air transportation system and turn it over to an entity which would serve private interests rather than the public. We believe a shift of this core public responsibility could have significant negative impact on rural communities, consumers and citizens across the country.

Our air traffic control system is an important public benefit that protects our consumers and ensures the ability of passengers and freight to fly to communities large and small. Yet, in recent years, consumer complaints against the commercial airlines are at unprecedented levels, routes to small and mid-sized towns have been cut by 20%, and the never ending proliferation of fees and charges have left consumers feeling at the mercy of airlines. Meanwhile, the airlines are raking in high profits from record baggage fees, and all of this is the direct result of increased power and consolidation.

As a result, before considering any proposals to change the governance and authority of our air transportation system, we believe that Congress should convene immediate hearings in order to answer the following questions:

First and foremost, how would a privatized system ensure that the commercial airlines are not able to influence significant changes or investment decisions that could impact other stakeholders and negatively impact exacerbate customer service, or the timeliness or affordability of air travel in all parts of the country?

If the commercial airlines are basically governing themselves, what recourses would consumers have for complaints and mistreatment? How will public oversight be structured and how will we guarantee that adequate resources are allocated for robust monitoring and rigorous oversight?

How would a privatized system protect rural consumers and ensure consumers' access to small and mid-sized airports? Already, large commercial airlines have cut their routes by 20% and one CEO has stated that “modernization” efforts would be used to concentrate resources at their most profitable routes in the Northeast.

How will we guarantee that medical flights on smaller aircraft can get in to an airport near a specialty health care center and ensure that financial interests don’t create perverse incentives or prioritize balance sheet concerns that create situations that could endanger Americans in need of emergency medical care? Would local cities and towns be increasingly saddled with the costs of keeping their airports open?

Would privatizing air traffic control give the airlines and any other private interests the ability to directly influence or impose new taxes and fees on air travel?

How would placing more control in the hands of commercial airlines impact issues such as gate access and funding of airports?

The details which have been released to date have failed to adequately address these concerns, and we are extremely concerned that any move to privatize our air traffic control system and put more control over the fate of small communities and consumers in the hands of the commercial airlines would be extremely detrimental to our traveling public.

We look forward to working with you on this important issue.

Sincerely,

Donald Cohen  
*Executive Director*  
**In The Public Interest**

Sally Greenberg  
*Executive Director*  
**National Consumers League**

Clare Crawford  
*Executive Director*  
**Center on Policy Initiatives**

Derecka Mehrens  
*Executive Director*  
**Working Partnerships USA**

Selena Shilad  
*Executive Director*  
**Alliance for Aviation Across America**



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# Pitfalls of Air Traffic Control Privatization

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Professor Elliott Sclar, Columbia University  
and The HDR Management Consulting Group  
711 Westchester Avenue  
White Plains, New York 10604

**February 2003**

**Report commissioned by:**  
National Air Traffic Controllers Association

***Pitfalls of Air Traffic Control Privatization***  
**Professor Elliot Sclar, Columbia University**  
**and The HDR Management Consulting Group**

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## **Pitfalls of Air Traffic Control Privatization**

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## Preface

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The purpose of this White Paper is to provide the National Air Traffic Controllers Association (NATCA) with an independent analysis of the claim that service performance improvements and long-term operational savings can be achieved through the privatization of U.S. Air Traffic Control operations. NATCA has an abiding responsibility for helping to maintain safe and efficient working conditions for its membership as they fulfill their individual obligations for maintaining safe and efficient flying conditions for the American people. The Project Team assembled to conduct this was led by noted author Elliot Sclar,<sup>1</sup> Professor of Urban Planning and Public Affairs at Columbia University, and HDR's Management Consulting Group.<sup>2</sup>

## Executive Summary

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Privatization of the FAA's Air Traffic Control function, which had been off the table since September 11, 2001, has been resuscitated by President Bush's amendment of Executive Order 13180. The amendment revoked the "inherently governmental" status of air traffic control work previously granted by the Clinton administration. Prior to September 11, 2001, advocates had been advancing privatization as a solution to the burgeoning air traffic congestion problem. The current downturn in air travel, and the new focus on safety and security has left those same advocates bereft of a good argument for why privatization makes good sense. However, the disappearance of this rationale has not stopped advocates from attempting to re-introduce the privatization debate. Advocates have fallen back upon the generalized privatization ration-

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<sup>1</sup> Professor Sclar, an economist and urban planner, is the Director of graduate programs in Urban Planning at Columbia. His book on privatization, *"You Don't Always Get What You Pay For: The Economics of Privatization,"* was published by Cornell University Press and won two prestigious academic awards, the Louis Brownlow Award for the Best Book of 2002 from the National Academy of Public Administration and the 2001 Charles Levine Prize from the International Political Science Association.

<sup>2</sup> Since the 1970's, HDR has been responsible for the procurement of more than 30 public operating facilities, represented more than \$5 billion in public-private capital expenditures, and negotiated more than \$20 billion in public-private operating agreements.

<sup>4</sup> ale of price, technology, and funding to justify an essentially ideological predilection.

Privatization advocates point to cases of air traffic control privatization in other countries to highlight the potential value of privatization for the United States (U.S.). However, an independent review of three prominent international privatizations, Australia, Canada, and Great Britain demonstrate the dangers of privatization and the inability of private air traffic controller (ATC) monopolies to effectively deliver positive results in any of the three criteria that prompt privatization consideration: reducing cost, increasing the speed of modernization, or stabilizing funding. Further, the case reviews demonstrate that privatized air traffic control systems tend to impose greater costs on users, are prone to technological failure as well as disruptive labor disputes, and privatizers ultimately rely on government backing, to costly effect. In Canada, the privatized system has led to massive increases in user fees for passengers, and dangerous understaffing in towers. In Australia, excessive demands on controllers have led to a series of strikes, while failures with new technologies led to actual radar blackouts and major traffic disruptions. In the United Kingdom, the newly privatized National Air Traffic System (NATS) has been forced to go to the government for financial bailouts valued to date at two thirds of the original sale price, while technological failures have led to multiple system shutdowns and operational irregularities.

Evaluation of the nature of air traffic control provision suggests that privatization cannot address the efficiency concerns advanced by its advocates. ATC cannot be competitively bid. The profit making market based incentives for efficiency and economy that are supposed to motivate a private provider do not easily align with the government's abiding interests in safety and security. Moreover, cross subsidy, which maintains geographic diversity in service provision, is not sustainable under the proposed user fee system. The labor intensive, and inherently monopolistic nature of air traffic control provision undermines effective private provision. Monopolistic, revenue-driven organizations, regardless of profit or not-for-profit status, have little incentive to keep fees at a minimum. "Efficiency" in a labor-intensive service necessarily consists of staff minimization strategies, which tend to be contrary to the safety principle that lies at the heart of ATC work. More importantly, as more and more private enterpris-

es have access to the vital air traffic control information as a result of the increased use of contractors and subcontractors, the U.S. is more exposed to the potential threat of terrorist activities.

Lastly, based on a proprietary cost model and analysis of the Federal Aviation Administration (FAA), the Project Team estimates that privatization of ATC operations in the U.S. could lead to a 30% cost increase or more if the provision of equivalent levels of ATC services were provided by private contractors. In the end, once cost of training and liability expenses are appropriately taken into account, the federal government will spend more in its efforts to privatize ATC than the FAA would spend to provide the same service.

## **1.0 The Context of ATC Privatization**

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Prior to the downturn in air traffic that has been one of the bi-products of the terrorist attacks of September 11, 2001, there was a campaign to transform the management of the national air space from a public function to a contracted privately provided service. This campaign was premised upon causally linking two largely unconnected notions. The first was the well-known fact that there was a chronic and growing traffic congestion problem at the nation's busiest airports. The second was an assertion that it was the ineptitude of the public agency charged with the administration and safety of the ATC system, the FAA, which was the cause of the problem. More importantly, it was asserted that the FAA was incompetent to correct the problem, or at least was unable to do so in a cost-effective manner. While traffic congestion was a major concern, proponents of ATC privatization were able to juxtapose an accepted reality - the existence of congestion - with a more controversial theory about bureaucratic incompetence, implying, but usually carefully not concluding, that privatization would fix the congestion problem.

Now that the traffic congestion problem has fallen by the wayside, though it is certain to return in the coming years, privatization advocates stand bereft of a hook to hang

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 their cause upon. The recent push for ATC privatization, brought to light by President Bush's amendment of Executive Order 13180, revoking the "inherently governmental" status of ATC work, seems to come without explicit justification and swims against the stream of federalization in related work; namely airport security. Privatization advocates have failed to outline specific problems that radical reorganization of the ATC should solve.

Without a specific and highly visible reason for advocating ATC privatization, proponents are now left to extol the presumed virtues of privatization in general, and attempt to apply them to the case of ATC. Three primary reasons for ATC privatization are given:

1. Reducing costs
2. Increasing the speed of modernization
3. Stabilizing funding

The general argument on all three of these rationales is that the FAA, as a top-heavy bureaucracy, is incapable of making the desired improvements itself, *and that the private sector is the best substitute*. While it is true, as is the case for any public agency, or private ones for that matter, that there is room for improvement, it is not clear why a private replacement bureaucracy will be an improvement over an experienced public one. At the most basic level, there is simply no clear cut explanation for the claim that the FAA's bureaucratic behavior is sufficiently egregious as compared to that of the Federal Bureau of Investigation (FBI), for example, to explain why removing it from direct responsibility will markedly address the three problems listed above. In order to sustain the case for as drastic a change as privatization, it is first necessary to clearly demonstrate that inept public management is either *the* source of the problem or at least that it is a significant factor in its creation. Then it is necessary to demonstrate why the establishment of a new private entity, as the successor to the FAA would solve the problem. This is especially true if the successor agency is itself envisioned as a

unique corporate entity. It is not immediately obvious why the problems of one (public) bureaucracy will not reassert themselves in another (private) bureaucracy. From our review of the reports of existing privatizations and analyses done to date on the potential of a U.S. privatization, it is clear that neither of these has been demonstrated. They have merely been asserted.

Any serious commitment to improve the performance of the ATC system must start with a clear analysis of the problem and then link proposals for change directly to the problem. Cost and modernization issues at the FAA are not problems of bureaucratic incompetence. Rather they are multidimensional problems with far more powerful proximate causes. Among other factors, the pure scale of the enterprise, unmanaged growth in air travel, lack of adequate institutional support, and restructuring of the airline industry impact air traffic control efficiency. The ability of the FAA to respond is certainly a consideration, but it is not the determining consideration. Even if, for the sake of argument, one were to conclude that public management was the critical issue, any solution must reflect full cognizance of the nature of air traffic control work as a delivered service and the way in which an organizational change such as privatization would impact that work over time. That has not been done in any of the studies the Project Team reviewed. Instead the studies simply imply that a restructuring of economic incentives such as landing fees paid to a new agency, bonuses, and other rewards for employees will serve to alter bureaucratic behavior and cause the agency to handle more air traffic, more efficiently, and at a lower cost. While that is one possible outcome, it is equally, if not more, plausible that the incentives will distort behavior so that safety and security are jeopardized in the name of efficiency, that user costs will skyrocket, that the government will be forced into a massive financial bailout due to the inability to fully transfer associative risk with an air traffic control privatization, that the cost of the FAA's remaining security and safety responsibilities will swell as independent entities become responsible for implementation of safety standards, and that technological fixes will be implemented without adequate testing, bringing chaos to the air traffic control system.<sup>3</sup>

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<sup>3</sup> One can find examples of each of these negative outcomes in the privatization efforts in Australia, Canada, and the United Kingdom in turn.



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In general, privatization is a blunt instrument of organizational change. In many ways it is at variance with much of the general consensus in the management literature that effective organizational change is a process of continual improvement focused upon the actual work of service delivery. To make a case for privatization it is necessary to demonstrate that the problem is so extreme that incremental improvement is unworkable. Privatization proponents assert that to be the case, but they never identify the specific basis within the FAA for this conclusion. Typically, privatizations are aimed at improving efficiency by introducing competitive behavior to a marketplace. It is clear to all parties, however, that there is no potential for competition in the air traffic control market. Air traffic control is too infrastructure dependent, and far too vital to our national interest to set up multiple competitive systems. Services cannot be rebid at any level of frequency if we hope to maintain continuity in a knowledge-dependent industry. Privatization advocates would agree with this assessment of the inherent impossibility of inserting competition into the air traffic control market. However, they turn to general notions found in privatization theory that assert that, because private organizations can provide economic rewards to employees who further the profit or surplus generating potential of the organization, it will become more efficient in fulfilling its mission. The privatization literature also suggests that public agencies are entrenched and intractable to change. However there is also management literature that demonstrates that public agencies are as amenable to improvement as private ones as long as the problem is properly specified.

Implicit in the theoretical formulation of privatization is an assumption that efficiency will improve because customers can take their business elsewhere. The threat of the loss of business is supposed to ensure that the private provider will create a better product for the organization's customers. But what if the private agency is to be the sole supplier? Economic incentives can quickly become a double-edged sword cutting against the interests of the consuming public. The generation of revenue and economic rewards will not necessarily redound to better management of the ATC system. It is also important to note that the ability to generate revenue surpluses and improved organizational efficiency are not the same. Especially when a private monopoly with less public accountability is proposed.

Since any privatization of the FAA would take the form of a single agency, there are many reasons to look critically at proposals to privatize it, rather than working to improve it. A strong case can be made that substantial improvement in the management of the FAA will more reasonably occur through a process of internal reorganization than a wholesale switch in the organization delivering the service. This is especially true if the alternative organization will not be a market based competitive supplier of the service. Given that the base of expertise in ATC rests with the existing staff and management, the reality of any "privatization" will largely involve moving the same people into a new workspace to do virtually the same activities they were accomplishing prior to being privatized. A call for reorganization of an existing organization is not as dramatic as a call for privatization, but is likely to be more effective. In fact, when we take a close look at the proposed ATC system privatization through the lens of managerial efficiency, it is clear that it has little to do with solving air traffic control organizational problems. Rather, it reveals a simple ideological preference for deregulation and privatization regardless of circumstance. Privatization is central to virtually every domestic public policy proposal of the Bush Administration (except, paradoxically, air transportation safety<sup>4</sup>). It is part and parcel of the movements to privatize every public service from education to fire protection. Viewed in this light, it is clear that air traffic control inefficiency merely provides a rationale for change that is sought for other purposes. The danger in such an ideological campaign for change is that if it succeeds and privatization moves ahead, it is not clear that the change will be synonymous with improvement in a situation vital to all Americans. It stands at least as good, if not better, a chance of making things worse.

### 1.1 International Comparisons

Advocates are often fond of looking to foreign cases when expounding the benefits of privatization. This is certainly true in the case of ATC privatization.<sup>5</sup> Even a cursory

<sup>4</sup> On November 19, 2001, President Bush signed legislation creating a federal Transportation Security Administration (TSA), which, among other things, employs and manages federal employees who conduct airport security screenings.

<sup>5</sup> See, for example, Poole, Robert and Viggo Butler, "How to Commercialize Air Traffic Control," Reason Public Policy Institute, Policy Study 278, February 2001.

10 review of private ATC provision in foreign countries, however, demonstrates the inherent dangers of the monumental change the U.S. is being urged to make. Three different “types” of privatization have been attempted abroad: (1) sell-off to a for-profit entity, (2) a private entity wholly owned by the government, and (3) establishment of a non-profit entity managed by a “stakeholders board”. These are reflected by cases of privatization in the United Kingdom, Australia, and Canada respectively. Reviews of international cases of each type directly contradict the ability of privatization to effectively address any of the blanket concerns expressed by advocates – price, technology, or funding.

### 1.2 Reduction of Costs

Privatization advocates often presume a private “efficiency” advantage. Several ATC privatization efforts have been successful at reducing total costs. However, the “at what price?” question is rarely asked. Evidence from Canada and Australia suggests that the price is safety and employee satisfaction, both of which bring new costs. In Canada, NAV CANADA has been successful at keeping costs low by negotiating with Controllers to keep flexible schedules. As a result, fewer Controllers need to be hired and labor costs are kept low. The second result of this cost containment strategy has been an operational irregularity rate of two per 100,000 aircraft movements – over twice that of the American rate for a system 7% of our size.<sup>6</sup> Controllers in Canada are stretched to the point of being unable to perform their jobs.<sup>7</sup> Cost saving work rules have so infuriated controllers in Australia that a series of strikes have crippled air traffic movement for hours at a time at a high cost to Australians as a whole.<sup>8</sup> In both of these cases, cost savings strategies have translated to new, more serious problems with safety and efficiency.

### 1.3 Increasing the Speed of Modernization

A second claim of privatization advocates is that public bureaucracies have a poor

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<sup>6</sup> ATCA Bulletin, April, 2001; Canada’s total airline revenue passenger miles are seven percent of those flown by US carriers. Letters to the Editor, Wall Street Journal, July 24, 2001

<sup>7</sup> Montreal Gazette, March 21, 2002

<sup>8</sup> [www.airservicesaustralia.com](http://www.airservicesaustralia.com)

record of providing modern technology and that private ATC systems would be innovative and speedy adapters of new technology. The Canadian, Australian, and British cases all demonstrate that this is in fact not the case. Technological “innovation” in Canada has consisted of waiting for the U.S. to develop new technology and then importing it. Cases where private ATC providers have attempted to hastily implement novel technology in response to “incentives” are even more disconcerting. In Australia, implementation of Airservices Australia’s, The Australian Advanced Air Traffic System (TAAATS) has led to several technological failures, including a twelve-minute radar blackout.<sup>9</sup> In the United Kingdom, introduction of new software has caused severe disruptions and system shutdowns.<sup>10</sup> Controllers in a new London area facility have been unable to make out the call numbers of planes on their new Sony screens, which is a major safety hazard. Anecdotal evidence from newspaper reports has suggested major inefficiency and safety hazards associated with private implementation of new technology in this vital piece of national infrastructure. Far from supporting the argument that privatization brings better technology quicker, international cases demonstrate a substantial risk of technological failure.

#### 1.4 Stabilizing Funding

The third blanket claim common to most privatization proposals is that the funding stream associated with a private ATC provider would keep costs to users down, and isolate the government from the risk of escalating provision costs. Review of the Canadian and British cases both demonstrate cost escalations and increased user fees. In Canada user fees have increased several times since NAV CANADA’s inception, and particularly since the traffic downturn of the past year. The system is structured in such a way that even when the control fee charged to airlines decreases, passengers end up paying more. By 2002, the average fee per-traveler increased from \$12 to \$22.<sup>11</sup> The user fee system in Canada has definitely hit travelers as ticket prices have increased dramatically.

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<sup>9</sup> Daily Telegraph, July 8, 2000

<sup>10</sup> Daily Mail, March 28, 2002

<sup>11</sup> The Toronto Star, July 8, 2000

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The situation in the United Kingdom is even more problematic. The British privatized their ATC services by selling a 46% stake to a consortium of seven airlines, and an additional 5% to employees. The government retained 49% plus an extra “golden share.” Over the past year the government has had to bail out the new National Air Traffic Services (NATS) twice, to the tune of \$131 million – about two thirds of the original sale price. The private sector holds 46% percent of the equity in NATS, but as the recent government bailouts have demonstrated, the private sector is assuming none of the risk. Air traffic control is a vital public service, one in which a shutdown or catastrophic failure would cripple the nation. Regardless of technical or legal responsibility, the government will always be in a position of having to ensure continuing service. As has been made clear by the British case, market-based privatization of the air traffic control system means that the government surrenders its vital assets, but continues to assume the costs and final responsibility for ensuring continuing service. This situation could not possibly be described as “stabilized.”

## 2.0 The Nature of ATC Privatization

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ATC privatization is significantly different than typical privatizations. Typical proposals to privatize public services involve specifying the service to be privatized and putting out a competitive request for proposals (RFP). The service is then turned over to the lowest cost qualified private provider. The assumption is that the existence of alternative suppliers is sufficient to discipline the contractor to perform to the agency's specifications. While there is a great deal of experience to suggest that this is not always or even often the case, the situation in terms of ATC does not even fit this model.<sup>12</sup>

ATC privatization differs from typical privatization proposals in two essential ways. It cannot be competitively bid and the FAA has to retain a powerful supervisory role in the name of public safety and security. Thus while ATC privatization is vaguely consistent with the larger privatization movement, the form that is proposed for it bears only a distant familial resemblance to the mainstream of privatization proposals. This difference is sufficiently crucial as it calls into serious question the potential effectiveness

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<sup>12</sup> Sclar, Elliot, *You Don't Always Get What You Pay For: The Economics of Privatization*, Cornell University Press, Ithaca NY, 2000

of this privatization in its own terms. More importantly, if it is not effective in terms of the problems it is supposed to address, then the U.S. risks losing precious time and money in improving its ATC system. More importantly, it risks degradation rather than improvement in the system.

ATC is not and will never be a service subject to the discipline of the competitive market place. It fails the "yellow pages" test. There are no available private sector providers with listed phone numbers ready, willing, and able to sell a national ATC system on a moment's notice. Furthermore, the government could not create a competitive market for ATC services even if it wanted to. ATC does not lend itself to competitive market configurations. It would be inefficient to duplicate the costly advanced technology that modern ATC demands among many providers who would then compete to sell it to government. ATC is what economists characterize as a "natural monopoly." Situations of natural monopoly are situations in which, because of the large scale of operation and the high fixed costs in infrastructure, it is less expensive to have a single regulated provider.

Secondly and more importantly, because of safety and security considerations, it would be risky in terms of public safety to have private operators, either singly or multiply, each responding to their own internal profit imperatives, acting on their own operational protocols moving air traffic through the national air space. Review of the two recent examples in which the cost savings measures employed by private operators of public transportation services were directly or indirectly blamed for the May 10, 2002 "Potters Barn Derailment" in London, England<sup>13</sup> and July 1, 2002 mid air collision on the Swiss-German border<sup>14</sup> further substantiate the significance of safety considerations when considering privatization.

<sup>13</sup> Six people were reported killed and 65 seriously injured after a train crashed just north of London, England May 10, 2002. Although the UK's Health and Safety Executive Department has not determined the direct cause of this accident-incompetent maintenance and slipshod safety inspection conducted by Railtrack, the UK rail infrastructure operator, seems likely according to several reports.

<sup>14</sup> A July 1, 2002 mid-air collision over Switzerland killed 71 people, including 52 Russian school children. Skyguide, the Swiss company that operates Switzerland's air traffic control system, asserted pilot error. However, further investigation indicates a systemic breakdown, including inadequate staffing, the fact that the communications link with German air traffic controllers operating on a degraded mode, that the collision alarm system had been taken out of service for maintenance, and general lack of clarity about the lines of responsibility and authority.

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This operational risk is only compounded by the security risk associated with private operators and their employees having unabridged access to the nation's air traffic control systems. In an address to the Senate Subcommittee hearing, US Senator Chuck Schumer stated: *"I don't need to spell out the absolute havoc and devastation that would result if cyber terrorists suddenly shut down our air traffic control system with thousands of planes in mid-flight."*<sup>15</sup> With the increasing push for ATC privatization, access to sensitive information is further compromised without the necessary protocols and procedures in place to protect the public's interest.

In the final analysis, responsibility for air safety and security is considered an uncompromising responsibility of government. Even the most ardent privatization proponents are not willing to turn that responsibility over to either not-for-profit or for-profit companies.<sup>16</sup> As a result in the ATC privatizations that have occurred elsewhere in the world and in the proposals for domestic privatization, the regulatory function for reasons of safety still reside with national governments. Thus for reasons of both market structure and public safety, ATC privatization proposals are all variations on the theme of semi-public operation.

At present there are two dominant and somewhat complementary and somewhat competing visions of ATC "privatization." The National Civil Aviation Review Commission<sup>17</sup> advocated a serious reform of FAA internal operations, based on the establishment of a "Performance Based Organization" (PBO) within the FAA. The commission recommends that this PBO include an external oversight board and strong financial management incentives focused on the ATC and infrastructure needs of the 21st century. That model was effectively implemented in the December 7, 2000 Executive Order issued by President Clinton to establish an "Air Traffic Organization" (ATO) within the FAA. The ATO as envisioned in this executive order is more than a mere reorganization of an existing agency. It calls for the use of "strong incentives" to

<sup>15</sup> See Sen. Schumer address to the Senate Courts Subcommittee hearing examining new, state-sponsored cyber terrorist threats to the US security, February 13, 2002

<sup>16</sup> See Poole, Robert and Viggo Butler, "How to Commercialize Air Traffic Control," Reason Public Policy Institute, Policy Study 278, February 2001

<sup>17</sup> National Civil Aviation Review Commission, "Avoiding Aviation Gridlock and Reducing the Accident Rate: A Consensus for Change," December 1997 (<http://www.faa.gov/ncarc/reports/pepele.htm>)

motivate managers to achieve results. It calls on the new ATO to "consult with customers, the traveling public, including direct users such as airlines, cargo carriers, manufacturers, airports, general aviation, and commercial space transportation providers" in order to "satisfy the FAA's external customer needs." This reorganization is, as yet, not completed.

In the report accompanying the Executive Order, the White House called upon Congress to pass the needed legislation to permit the new ATO to replace existing excise taxes on passengers with cost-based charges on commercial users of the air traffic system. "The Air Traffic Organization needs to be able to price its services, in order to balance supply and demand in the short run and to know what steps are needed to meet customer demand in the long run."<sup>18</sup> According to the White House, once this legislation is in place, and cost-based fees finance the ATO, Congress should also permit it to borrow funds from the Treasury or private capital markets to finance long-term investments in the ATC. As will be explained below, an ATO will need a stabilized source of funding. A fee driven system will destabilize cash flow and undermine the effective continuity of air traffic control provision.

The more radical suggestion seriously under consideration comes from the conservative Reason Foundation.<sup>19</sup> They advocate a complete separation of the ATC system from the FAA. The Reason Foundation proposes the formation of a new non-profit institution, managed by a board of stakeholders (those with an interest in air traffic control) and funded directly through user fees. The FAA would retain an external safety supervisory function in the Reason proposal. The stakeholder board would be comprised of representatives of the various segments of the air carrier industry, pilots, airport operators and organized labor in the ATC field.

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<sup>18</sup> The White House Report on air Traffic Control, December 7, 2000

<sup>19</sup> Poole, Robert and Viggo Butler, "How to Commercialize Air Traffic Control," Reason Public Policy Institute, Policy Study 278, February 2001.



### 3.0 Understanding ATC Privatization Logic

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There is a fourfold benchmark against which we measure the performance of any transportation mode: safety, convenience, reliability, and cost. In this case we are evaluating the implications of privatizing the management of the national air space. It is the central element of infrastructure in our system of air transportation. Consequently we need to assess the privatization proposal in the context of modal performance. Though improvement in safety is always possible, and definitely desirable, the American Air Traffic Control system is a highly effective provider of safe air travel.<sup>20</sup> Certainly no proposal has suggested that privatization of the ATC function will improve the convenience of air travel. However on the third element, reliability, the existing system has generally done poorly and is expected to get worse again. In 2000, nearly half of all flights at major airports arrived late. About 1.9 million Americans were flying each day. Despite the current downturn in flying, that figure is expected to rise to about 3 million by 2013.<sup>21</sup> In terms of cost, many critics have suggested that the FAA is inefficient, but none have established that ATC is costing more than it should. Evidence from existing U.S. efforts to contract out tower operations demonstrates that ATC can be less expensive, but only at the cost of a reduced level of service. Critics have suggested that the FAA has not implemented Capital and Technological Improvement Programs as quickly as they should, and that this might improve if the ATC function were to be privatized. Evidence from the United Kingdom, and Australia suggest that this may not be the case.

Because the FAA manages the nation's ATC system, it must play a central role in any proposals to improve the situation. But what should be done? The answer is not easy because the problem is multifaceted. Any exact answer will depend heavily upon where one stands with regard to the relative problems and their sources. For example, from the point of view of the commercial air carriers the major problems are those of delay caused by the weather and the inability of the FAA to properly manage the air space, as well as lack of runway space. Runway space is not centrally controlled, and

<sup>20</sup> "You could fly commercially every day for 22,000 years and not lose your life in an accident." White House Report on Air Traffic Control Reform, December 7, 2000.

<sup>21</sup> "Let pilots do it," *The Economist*, June 9 - 15, 2001, pg. 31; NATCA, 2002 ([www.NATCA.org](http://www.NATCA.org))

therefore requires a more piecemeal campaign. The weather is taken as an uncontrollable given. But the FAA, viewed as a rigid bureaucratic manager that has failed to modernize the ATC system consonant with increasing travel demand, makes for a clear and specific target. From the FAA's point of view, they agree about the weather as a major cause of delay, but they cite the carriers for over scheduling flights with little to no regard for the capacity limitations of either the airports or the air traffic control system. The FAA also suggests that its ability to rapidly innovate new technology is hampered by the government's budgeting process. The federal government does not have separate capital and operating budgets. As a result, the funds needed for infrastructure investments by the FAA, have to compete with their operating needs as well as the needs of other federal agencies. By permitting the privatized agency to levy users fees, privatization proponents hope to overcome this problem. Theoretically, this may sound correct. Unfortunately, there are significant limitations as to the extent to which this holds true in reality-(1) there are limits as to what the customer will be willing to pay, and (2) the transportation industry operates within a cyclical marketplace. Additionally, there are implications with the type of technology that gets used, and there are other ways to solve the problem, all of which must be evaluated in terms of their long-term costs and benefits.

To bring some order to this debate, it is helpful to cluster the sources of the problem as being either on the "demand side" or "supply side" of the air travel market. In this context demand side refers to factors driving the market for air travel. The supply side focuses on the factors shaping the system's capacity to accommodate travel demand.

Demand side analyses point to population growth, the state of the economy, safety concerns, and deregulation as the principal drivers shaping the market for air travel. Demand side solutions essentially involve demand management innovations. These fall into two categories: creating substitutes for air travel and using pricing incentive to ration scarce airport capacity. In the former category are proposals to create attractive alternatives to short haul flights such as high-speed rail travel. In the latter category there are several proposals to use variations on what is called "congestion pricing" to ration scarce airport time and runway space. Congestion pricing involves using higher

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user fees at certain peak periods to induce airlines and general aviation flyers to reschedule their travel to less dense periods.

Supply side analyses see the problem on the "sell" side of the market and seek to overcome the capacity limitations of the existing air transportation system. They seek to expand existing airport and air traffic control capacity to match the growth in air travel demand. The dominant supply side approaches to the problem involve finding ways to expand capacity by building new airports, building more runways, and modernizing air traffic control technology and practices.

A second supply side approach is more indirect. It sees the root problem as the inherent shortcomings of public management of the air traffic control system. For analysts who hold this view, the solution is the privatization of the ATC function. The National Civil Aviation Commission concluded in its 1997 report that as a government bureaucracy, the FAA is too top-heavy, and slow to change. The Reason Foundation asserts that privatization is necessary because the FAA is a "tax funded, top-down bureaucracy that's micromanaged by Congress instead of being a business that's paid for and responsive to customers." Privatization proponents argue that only by taking ATC away from the FAA will it be possible to effectively implement any of the supply side solutions identified above or the demand side solution of congestion pricing. These proponents see the lack of speed in the implementation of new technology as principally an organizational failure by a public entity. Their solution is to call for some form of privatization of the FAA. It is the strengths and weaknesses of these proposals and the assumptions that underlie them that will be the principal focus of the remainder of this paper.

While it is easy to grant that FAA's management practices, as with virtually all management practices, can be improved, it is not clear from any of these reports why the FAA is so bad that little short of a wholesale replacement of the ATC function is the answer to the cost, modernization, or funding problems. The central question then is whether privatization will add significant value to attempts to improve air travel. As is demonstrated below, the proposed privatizations can generate a new set of problems that

could lead to a decrease in reliability, lack of technological innovation, and cost increases. Therefore given that the case for privatization is far from open and shut, it is important to understand the pros and cons of various courses of action with regard to FAA reorganization.

The reorganization debate is more than a debate over the economics of organizational behavior. It is also a debate about political economy. Some segments of the air travel industry stand to garner large economic gains if ATC privatization is implemented. Others risk losing some advantage and therefore oppose privatization. However such an important policy decision must be made on the basis of fact and not political economic advantage or ideological predilection. To fashion a context for taking many other elements into account, this paper will focus on answering four questions. How well do proposals to privatize the ATC system accord with the travel problems the nation faces? Along with gains, what are the costs that privatization will impose? Do the gains exceed the costs? What other alternatives should policy makers be considering?

#### **4.0 The "Business" of Privatization**

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A presumption underlying both the National Civil Aviation Review Commission proposal for a Performance-Based Organization, the Reason Foundation proposal for a governmental corporation, and the Clinton Administration's executive order establishing an ATO is that ATC is essentially a "product." As such, it could, with little difficulty, be provided to the FAA under contract by a "business." Consistent with this product/business approach, ATC privatization is often referred to as "corporatization," or "commercialization" in the relevant literature. The problem with such theorizing by analogy is that while it is intended to illustrate that ATC is just one more marketable product, it, of necessity, oversimplifies the complexity of "the product." It overemphasizes the final service, actual guidance to in-flight aircraft, but it de-emphasizes the important qualities of ATC as an element of our national public infrastructure. The system of physical structures, communications equipment and a continuing and reliable supply of highly trained and loyal personnel that generate the actual guidance service

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is in reality a single piece of our national infrastructure. The actual service is the outcome of the soundness of this infrastructure. For these reasons, it, in and of itself, can never truly be a product offered for sale by private suppliers in a market-like setting. As a result the discipline of market competition and the metaphor of business cannot be invoked as a safeguard for our public assets. However by urging us to adopt the view that ATC is just one more saleable product, privatization proponents divert the policy discussion away from choices about effective agency reform and stewardship of public assets into a discussion of choices about styles of market regulation. The bottom line risk in this dialogue is that it threatens the long-term stability and security of our national air space. The well being of this air space is crucial to both our national security and commercial prosperity.

The "business model" metaphor also fails because it does not come to grips with the nature of actual ATC work. The production of ATC is labor-intensive work. Although there is a great deal of expensive physical capital in the form of buildings and equipment, the largest proportion of operating costs for ATC is personnel related. Studies undertaken by the National Research Counsel (NRC) demonstrate the extent to which both the quality and quantity of ATC service reflects the skills that the staff brings to its work. The staff in turn responds to the context of professionalism within which they work. The argument for privatization never makes clear how and why a "corporate culture" will improve the work environment and professionalism of air traffic control work. At best they suggest that economic incentives could be used to enhance productivity. While the importance of fair compensation should never be underestimated, it is only part of the job market equation for highly skilled and well-educated workers who have other options. Consequently in contemplating meaningful reform within the FAA it is necessary to start from a complete appreciation of the work environment of air traffic controllers. A top-down privatization will have less to do with improvement than would a better, bottom-up understanding of their working conditions and the kinds of improvements they deem necessary. Privatization, because it relies on contractual relationships, requires simplified staffing standards that the FAA can easily check. However, as the NRC found, it is almost impossible to develop objective standards for this labor-intensive work as "the issue of appropriate staffing

levels is not simply a question of science and models but involves a long and frequently contentious debate over work rules, productivity, compensation, management practices, and other issues."<sup>22</sup>

No proposal to privatize ATC calls for absolving the FAA of ultimate responsibility for the safety and security of the national air space. Indeed the Civil Air Navigation Services Organization (CANSO), the international industry association of privatized ATC systems, flatly states that "commercialization does not...mean that...the government can abdicate its responsibility for the provision of air navigation services."<sup>23</sup> Moreover, even if the commercial ATC operator is permitted to set its own fee structure, some residual oversight of rate setting will need to remain with the FAA given the monopolistic nature of the service. Given that, from a policy point of view, the only relevant questions concern the costs and benefits of a highly regulated monopoly versus direct public operation. Even NAV CANADA, perhaps the most thoroughly privatized of the ATC systems to date, grants residual safety regulation to Transport Canada.

One of the strongest arguments for privatization is found in the belief that it will save money. It is suggested that privatization will cut the bureaucratic waste out of the operation. This is done by a methodology that can be referred to as "psuedo benchmarking." Benchmarking is a time honored management tool for comparing the performance of an organization with an outstanding peer as a way to assess its performance in terms of effectiveness and efficiency. However it is, at best, only a first approximation as no two organizations are ever identical. Differences matter and must be taken into account. The Reason Foundation, in its attempt to argue for the cost savings of privatization, cite the cut in the size of the Canadian ATC system when it was converted to a private operation with the creation of NAV CANADA. There are clearly problems with such a comparison between a system the size of the U.S. system and the Canadian system, which is only a fraction of the size. But, more importantly, as the NRC study shows, the cut in staffing at NAV CANADA may represent a decrease in quality. Quality in this case translates into passenger safety and national security.

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<sup>22</sup> TRB Special Report #250, pg. 1

<sup>23</sup> CANSO, "Corporatization of Air Navigation Services," A Special Report, August 1999, pg. 4

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Situations in which these differences are not duly noted are situations of pseudo benchmarking. In general the studies of foreign experience with private ATC never assess its direct relevance to the U.S. They merely infer that it is relevant.

## **5.0 Privatization and Public Finance**

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One of the largest dangers in privatization of the ATC system is that such a privatization is not really what it purports to be. It is billed by its advocates as an attempt to improve the efficiency of the ATC system. In fact it is really a battle for control of public funding. All the foreign ATC privatizations and the one proposed for the US have one element in common. They all work on the assumption that the system will be self-supporting via user fees. The notion of self-support via user fees is consistent with the business model. However it has two major problems. The first concerns the equity nature of the funding. The federal government presently finances air traffic control. Air travelers, in part, pay some of the costs via an excise tax based upon the value of their tickets. It is to some extent a progressive tax, in that people who purchase first class tickets tend to be more affluent than those who sit in coach. The excise tax on first class tickets is higher than the tax on coach tickets. A switch to a flat per seat fee structure means that all travelers pay the same user fee. As a proportion of a lower fare ticket the fee would be higher. To the extent that air travel is price elastic, this switch means that the most budget conscious travelers bear the highest proportion of air travel costs for a privatized ATC system, either out of pocket or by simply cutting back on air travel. That in turn means that the low cost carriers bear a disproportionate share of the costs. Undoubtedly they will (rightly) protest the loudest over any attempt to switch fee structures. To a large extent the move towards privatization represents a move toward a firmer hold on the industry by the largest carriers. As a matter of equity, the cost will be borne by the least able to pay.

The second concern is about the behavioral characteristics of the organization that such fee driven privatization will put in place. It is noteworthy that crucial to every instance of global privatization has been an assurance that the user fee structure that accompanied the separation will be sufficient to support the new organization.<sup>24</sup>

Absent such a sustainable fee structure, privatization is impossible. It is more than coincidence that pressure for the separation of ATC from government control only occurred in an era in which global air traffic has been expanding. It is in many ways similar to the experience of highway building in the U.S. In the early years automotive and highway building interests sought the use of general revenue funds to subsidize the growth of the transport mode. However once it achieved mass acceptance, they pushed for the creation of an earmarked highway trust fund to ensure that motor vehicle generated taxes were used exclusively for highway construction and maintenance. Privatization at the bottom line is really nothing more than an attempt by elements in the industry to ensure that tax revenues generated by air transport are recycled to air transport in ways that they can control. As a matter of public finance theory there is no reason why the sources of taxes and the uses of the revenues must be linked. On the other hand as a matter of practicality in financing needed improvements, the approach has much to recommend it. It is important to note that there are other ways to achieve the same result without the separation of the ATC function from the regulatory function. More importantly there are real reasons to be concerned about such a spin off.

A separate, revenue-driven organization has its own priorities. These priorities may or may not be the same as those of either the FAA, charged with responsibility for the safety and security of the national air space, or the users who pay the fees. Advocates of privatization cite the ability of the privatized entity to turn to private capital markets to secure needed financing for upgrading facilities as a major advantage of privatization. The private entity can do this because it can dedicate its revenue streams to repayment of the bonds. However because it assumes these debt obligations it is driven to insure a steady stream of user revenues. More traffic is always in its interest. At times for reasons of safety and security, however, the FAA's concern, may be for less traffic. In a business cycle contraction or as a result of an event like last year's terrorist attack, fees will contract. The organization would then become hard pressed to meet its bondholder obligations. Since there is no government guarantee for these bonds, the organization is faced with several undesirable choices: they can raise fees, even as

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<sup>24</sup> CANSO, "Corporatisation of Air Navigation Services," A Special Report, August, 1999.



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passenger traffic is diminishing; they can concentrate on activities that generate fees rather than activities that generate a more efficient system; or they can go back to the government for a bailout, as in the U.K. case. Efficiency in the context of fee generating activities is in the organization's interest. Efficiency that would not be fee generating is not. There is evidence from the experience at NAV CANADA that in fact air traffic congestion did not diminish even as fee revenue increased.<sup>25</sup> More importantly we must recognize that from day one into an uncertain future, the newly privatized ATC operator and the government no longer share all of the same goals. We are setting up a situation that will increase conflicts of interest (moral hazards) and we will try to bridge them by ever more expensive regulatory schemes (transactions costs).

A final financial problem with privatization is that it eliminates cross subsidy. Cross subsidy occurs when revenues from one portion of an operation subsidize other portions of the operation. It is quite common in transportation. For example, urban bus systems run some routes that yield a surplus over costs and others lose money. However together they form a unitary system that provides a vital public service. Absent the cross subsidy, the fares on the high cost routes would have to be higher. That in turn would lower usage and defeat the purpose of the public transport service. The Reason Foundation opposes cross subsidy. Their reasoning is that to the extent possible users should pay the full cost of every good or service they consume. That argument works best for situations in which there are not larger externalities or desirable public benefits from the system. Where such benefits exist, cross subsidy affords a way to minimize the total degree to which the public sector (general taxpayers) must subsidize a public service. Air transportation is a national asset, as we have realized once more in the wake of September 11th. Cross subsidy helps to strengthen it. Privatization will seriously weaken it.

To understand how this can be, consider the experience in Canada. In 1996 when NAV CANADA was established, Transport Canada essentially did what the Major Government did in Great Britain when they privatized British Rail. The British Government pulled a unified system apart and sold off the pieces separately. The

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<sup>25</sup> Internal NATCA Memo, "Notes from interview with COPA."

result was that British Rail rapidly went from one of the best national railroad systems in the world to one of the worst. The Canadian Government until 1996 had a unified air transport infrastructure system. The Government owned the airports and the ATC system. Following the British pattern, they separated the pieces and sold them off separately. They sold off the airports where traffic was lowest at low prices typically to the local municipality. In the case of the 26 largest ones, they were sold to private for-profit operators. It was the fees from these larger units that subsidized the operation of the smaller units. With the end of cross subsidy, fees rose rapidly at these smaller airports. The bulk of the surpluses at the larger airports no longer go to the public sector, beyond previously negotiated lease or sale revenue. And of the amount that does, the national government is no longer constrained to use its share to support the smaller airports. Yet if Canada is to have a viable national air transport system, all the airports are needed. In addition, because the ATC operator NAV CANADA is separate from the airport operators, it is not constrained from charging ever-higher fees to meet its organizational goals, regardless of local impacts. The result of the disappearance of cross subsidy is a serious shifting of costs and benefits in the Canadian air transport industry. In fact, user fees have shot up several times. Following the market downturn of last year, NAV CANADA instituted a 6% user surcharge to cover their shortfalls. There exists little barrier to uncontrollable escalation of fees.<sup>26</sup> It is not clear that air travel in Canada is better as a result. There has been some upgrading of system equipment. But there is also evidence that attempts to cut labor costs are leading to a less safe system.<sup>27</sup> Moreover fees are rising everywhere and small airports are under great pressure. If the viability of small airports is threatened, the entire air transportation system in Canada will be undermined. Although the Reason Foundation and other advocates are ready to call NAV CANADA a success, a more objective assessment would have to hold that, at best, the result is still unclear. At worst there are clear signs that it could be heading in the same direction as British Rail.

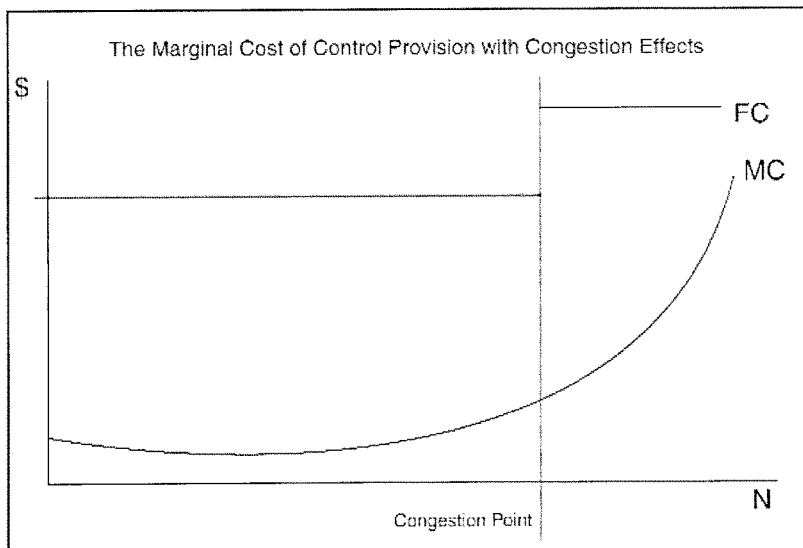
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<sup>26</sup> Toronto Star, "Air Canada Open to Ad Rules," June 15, 2002

<sup>27</sup> Privatization has exacerbated the working conditions. In other words induced more fatigue in the scheduling because there's a lot more being demanded of the controllers." Bhimi, Fuzz, CNN Sunday Morning, April 20, 2001.

## 6.0 Labor Costs and Air Traffic Privatization

As pointed out above, despite the high level of technology and level of capital equipment necessary for ATC, the variations in operating costs are driven by labor. The crucial question from an economic point of view concerns the degree to which a transformation of ATC from public to private operations can achieve real cost savings in system operation. It is doubtful that it can. As a natural monopoly, ATC has high fixed costs - towers, monitors, radar, etc. However, the marginal costs of service delivery are usually quite low. That is, the cost of providing one additional control (directive order from tower to cockpit) approaches zero. This is a characteristic of natural monopolies that holds true until the point of congestion (the point when more controls are requested than a system can handle). At this point, a quantum change in the costs of operations occurs. Due to the structure of the market, in which the initial infrastructure is massively expensive, but the cost of each additional unit of service is so low (see figure below), air traffic control can never constitute a competitive market in the sense that we are generally accustomed to. The closest ATC can ever get to competitive is to be broken up into its constituent parts and have each auctioned off to new private monopolies. As in the British Rail cases, the hope here would be that



some of the constituent parts might foster competition, a strategy that experience has shown to be highly risky.

Evaluation of the natural monopoly model demonstrates that unless massive expansion is required, the marginal costs of provision are determined almost completely by labor costs. The salient question then becomes: can a private provider keep labor costs below those of a public service provider?

As the largest scale provider of ATC in the world, the FAA has reasonably efficient purchasing power on capital equipment, the real question of costs comes down to labor - can a non-FAA organization compensate air traffic controllers at a lower level?

The evidence at this point suggests that it is unlikely in the long run. The evidence derives from the experience with the FAA FCT Program. It demonstrates that while today, private control companies operating low-activity, non-radar ATC facilities do compensate their controllers less, on average, than the FAA does, this would not be sustainable in a fully privatized system. Furthermore, while the training costs and standards of these employees are currently lower than the FAA's, this would also be impossible to sustain in a fully privatized system. On top of these cost differences, the current advantage of the private sector contractors - that they are not required to pay for health insurance, a major compensation factor in any labor-intensive industry - would likewise be impossible to sustain.

The factors that permit the existing small private contractor operators to pay their employees less than the FAA also demonstrate the reason that a privatized ATC organization would not, and could not benefit from those same cost savings. First (1), though individual contractors are paying less than the FAA, the per-employee cost to the government is actually higher. Half the employees of these private ATC companies are retired FAA controllers who are drawing government pensions.<sup>28</sup> Because the FAA has a mandatory retirement age of 56 to which the FCT program is not subject, the government is effectively creating and subsidizing a low-cost artificial employee

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<sup>28</sup> See FCT Newsletter

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pool for the private sector. This is not a cost containment strategy. It is a cost shifting strategy. To the extent that it relies on pensions to make the private compensation attractive, it essentially shifts the costs from the FAA as an agency to the rest of the federal government as a pension provider. To the extent that the Department of Transportation (DOT) claims cost savings, they are a manufactured accounting mirage. More importantly, these savings only work at the small scale of the contract tower program. Once the FAA attempts to scale up to the level of the entire ATC organization—without a FAA to employ and then retire controllers, there can be no wage subsidy effect via pensions.

Second (2), the FAA paid for training its retired controllers who then retired to work in private ATC provision companies. Retired FAA controllers currently constitute about half of the labor pool for the private ATC providers. These pre-trained controllers required less intensive training upon re-employment with the private providers. As with the wage subsidy, the training subsidy effect would no longer exist once there was no longer an FAA to artificially provide a pool of pre-trained, employable air-traffic controllers. The second largest labor pool segment for the existing private ATC providers are military-trained controllers who work with private providers while they wait for an FAA control spot to open up. As with retired FAA controllers, the private providers benefit from an indirect training subsidy, this time from the military. This training subsidy does not necessarily disappear with ATC privatization. However, the subsidy also does not benefit a private ATC organization anymore than a public one. Furthermore, one can argue that the transaction costs involved in having two government organizations (the military and the FAA) work together to determine training standards and airspace coverage, is far less than it would be if the military had to negotiate with a privatized ATC organization.

Third (3), although private ATC provision companies are currently finding a labor pool that will accept the lower compensation they offer<sup>29</sup>, the statistical evidence suggests

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<sup>29</sup> It should be noted that although the starting wage for private controllers closely approximates the starting wage for FAA employed controllers, the total compensation is less due to government benefit and pension packages, and the lack of experience or loyalty-based wage increases in the private sector.

that this trend can not continue. If the share of ATC operations provided by the private sector increases, the pool of labor willing and able to work for the lower compensation level (than the prevailing FAA level) will decrease proportionately, especially if congress agrees to stand behind the FAA's existing minimum controller employment level negotiated with the National Air Traffic Controllers Association (NATCA).<sup>30</sup> If the private ATC providers expand their share of the ATC market, there will definitely be upward wage pressure in the private market. A totally private market will most certainly need to provide approximately the same level of compensation that controllers currently receive. This is true for two reasons: First, failure to provide approximately equal wages will put a newly privatized ATC organization on a collision course with organized labor, and will therefore face a huge increase in transactions costs negotiating with the union.<sup>31</sup> Secondly, the existing labor pool has been contracting over the past several years, making wages highly sticky in the downward direction. The following graphs derived from FAA's internal employment statistics (1997), demonstrate that the absolute number of people employed in ATC has declined since its peak in 1991, and that ATC employment has exhibited continuous negative growth since 1993.

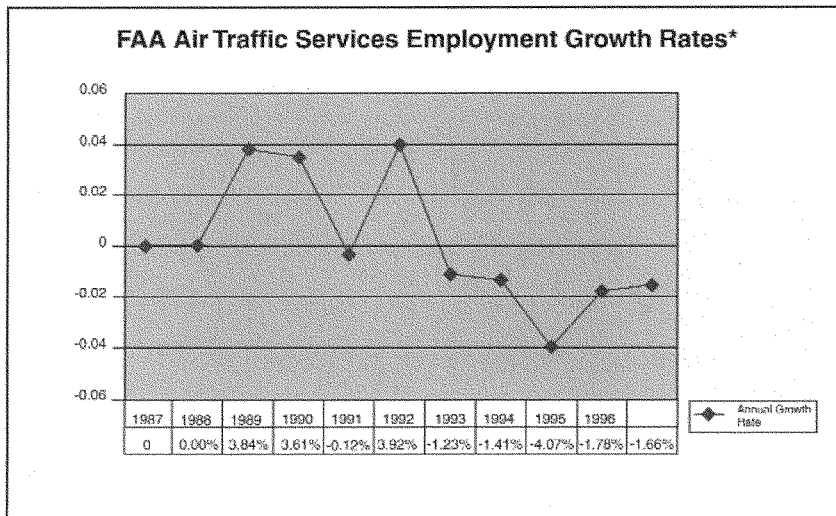
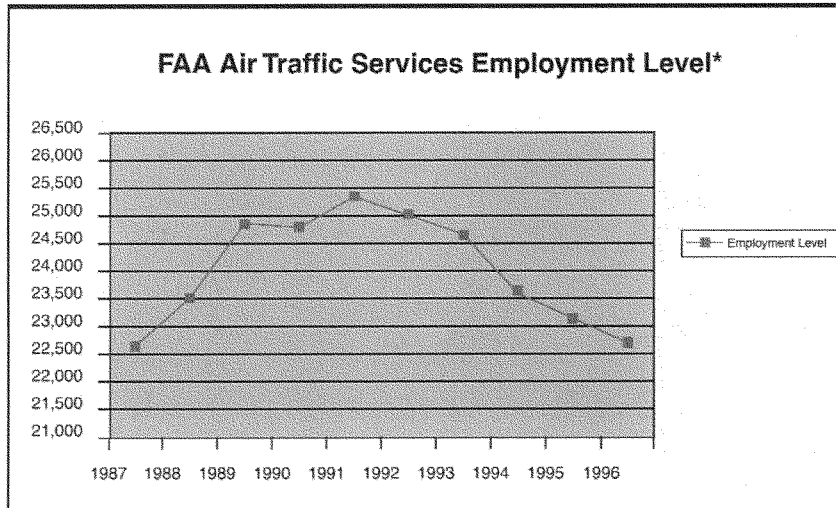
In a market tightened continuously for several years, reserve labor tends to leave the occupation for alternative opportunities, and it is unlikely, therefore, that a privatized ATC organization could force the compensation package value down on the existing labor pool. In general, in fields employing highly skilled labor, it is the forces of supply and demand, and not the fact of public or private sector provision that determines the size of the labor pool and the effective rates of compensation.

The fourth (4) reason that we can not assume a privatized ATC organization could provide lower cost labor than the FAA, is that although current private ATC providers are paying their controllers less, on average, than the FAA, those employees are actually costing the government more, per-head, than the FAA's own employees due to the various wage subsidy effects. The current savings per contract results from the fact that

<sup>30</sup> As a part of a Collective Bargaining Agreement, the FAA has agreed to minimum levels of staffing, regardless of increases in the percentage of operations that are contracted out.

<sup>31</sup> One can turn either to the Canadian case, or the Australian case, where strikes have caused major disruption to continuing service, to witness the veracity of this statement.

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\*Air Traffic Services includes ATC workers and other ATC-related employees. FAA Administrator's Fact Book.

the contractors use drastically fewer controllers per tower. When assessed per-head, contract employees cost the government more than FAA-provided controllers. Private ATC providers are primarily contracted to deal with labor, the capital equipment is still owned and serviced by the FAA. So, although the private controllers receive lower compensation than FAA controllers, the profit requirement of private operators appears to cover the difference while the level of service being provided cannot be

considered equivalent.

The evidence from current privatization efforts demonstrates that though private operators can provide lower compensation to their employees, a wholly privatized ATC system could not benefit from lower labor costs than those faced by the current public system.

## **7.0 Conclusions**

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Reorganization of the FAA is not necessarily wrong, but the process as currently advocated has been demonstrated to fail elsewhere. Privatization proposals for ATC put the cart before the horse. Privatization advocates propose a solution, but never exactly specify a problem. To the extent that they do identify a problem such as variable public funding for new investments, they fail to compare and contrast the alternative solutions. Instead they use the problem to strengthen the case for their preferred solution - privatization. That is not surprising because the drive for privatization stems from a complex set of motives, the least of which appears to be more reliable or efficient air travel performance. The privatization effort is driven by concerns about controlling the revenues to be invested in the ATC system. The case for privatization as an elixir for funding problems, or technological improvement is then only made by inference. However the main reason for reorganization should be enhanced performance. If that is the case then the place to start is inside the FAA, not outside. Successful reorganization processes cannot be imposed from the outside. They need "buy in" from both management and labor. There is a strong record of success whenever labor and management work together to reform an organization. The FAA, though it does not have a history of good relations in this regard, could certainly change with wise leadership.

Reorganization cannot be considered apart from the larger role that air travel plays in the nation's transportation system. Moving to an independent, fee-driven agency creates one more political force in opposition to the badly needed, more comprehensive, planning that might integrate travel modes to accomplish a national transportation mission, such as enhanced rail travel as a substitute in some corridors. In a more gen-



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eral sense, any improvement in air transportation will only come from a multifaceted effort involving both demand and supply side innovations. A focus on privatization detracts from this more comprehensive solution. It is now time to seriously rethink the entire question of the national air transport system within the context of an overall review of air travel safety and security. We must look at the range of alternatives to address improved and secure air travel in the context of national travel in general.



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548

February 10, 2016

The Honorable Peter DeFazio  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

The Honorable Rick Larsen  
Ranking Member  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
House of Representatives

**Subject:** *Federal Aviation Administration: Preliminary Observations of Potential Air Traffic Control Restructuring Transition Issues*

Since 1987, several countries have shifted the responsibility for providing air traffic control (ATC) services from national civil aviation authorities, to independent, self-financed air navigation service providers (ANSP) with either public or private ownership. The ownership structure of these ANSPs varies from government-owned entities (e.g., either wholly owned or partially owned government corporations) to privately owned entities (e.g., entities with private ownership and control of an air-traffic services corporation). A privately-owned entity can be a "for-profit" or a "non-profit" entity.

In the United States, which is generally considered to have the busiest, most complex and safest ATC system in the world, the Federal Aviation Administration (FAA)—operates both the ATC service and is the safety regulator. Over the past two decades, U.S. aviation stakeholders have debated whether the FAA should remain the entity that operates and modernizes the ATC system or whether a restructured entity should take on this role. In 2014, we found that, according to stakeholders and FAA officials we interviewed, it is important to identify what problem or problems separating ATC services out of FAA is intended to solve, before proceeding with it as a solution. Specifically, the current system faced challenges related to (1) mitigating the effects of an uncertain fiscal environment and (2) modernizing the ATC system.<sup>1</sup>

You asked us to explore potential transition issues to be addressed if the current U.S. ATC organization were restructured. This report provides preliminary information on the nature and scope of key issues associated with such a transition, according to selected experts and literature, and is based on our ongoing review of transition issues associated with a potential ATC restructure.

<sup>1</sup> GAO, *Air Traffic Control System: Selected Stakeholders' Perspectives on Operations, Modernization, and Structure*, GAO-14-770 (Washington, D.C.: Sept. 12, 2014).

For our ongoing work, we identified transition issues primarily through a review of our prior related work<sup>2</sup> and available literature on restructuring of ATC organizations as well as through exploratory interviews with academics, professionals in the U.S. aviation industry, and officials involved in transitions in other countries—Canada, the United Kingdom (UK), and New Zealand.<sup>3</sup> This work identified ATC restructure transition issues related to: (1) funding and financing, (2) asset valuation and transfers, (3) separating safety and regulatory functions from ATC operations, (4) managing potential impacts of a restructure to airspace users, (5) human capital, and (6) ATC modernization efforts, as well as other related issues. We then selected 33 experts with a range of expertise to speak on these ATC transition issues. We identified these experts through a contract with the National Academies of Sciences (NAS), literature on ATC reform, and related GAO reports. We provided NAS with criteria for selecting experts, including: (1) type and depth of experience, including the expert's recognition in the professional community and relevance of any published work; (2) present and past employment history and professional affiliations, as well as any potential conflicts of interest; and (3) other experts' recommendations. The views represented are not generalizable to those of all experts on ATC transition issues; however, we were able to secure the participation of a diverse, highly qualified group of experts and believe their views provide a balanced and informed perspective on the topics discussed. This report is based on the results of interviews to date with 29 of 32 experts using a semi-structured interview approach.<sup>4</sup> See Enclosure I for a detailed description of our scope and methodology. For our final product we plan to follow up with each expert for a second round of data collection, using a more structured set of questions to allow for more quantification of their collective views as well as interview FAA and industry stakeholder positions on potential transitions issues.

We conducted this performance audit from June 2015 to February 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### Background

The FAA operates and maintains the U.S. national airspace system which handles over 50,000 flights a day and more than 700 million passengers each year. Various offices within the FAA are responsible for operating and managing all aspects of the ATC system, regulating safety, implementing modernization efforts, and conducting research and development activities. For example:

- ATC operations and management: The FAA Air Traffic Organization (ATO) operates and maintains this system through (1) the FAA workforce that includes approximately 6,000 technicians and 14,500 air traffic controllers who work in airport towers, terminal areas, en-

<sup>2</sup> GAO, *Air Traffic Control: Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from Their Commercialization*, GAO-05-769 (Washington D.C. July 29, 2005) and GAO-14-770.

<sup>3</sup> We judgmentally selected academics and professionals to interview based on their expertise of ATC transition issues and published studies on the topic.

<sup>4</sup> Of the 33 experts that we selected and contacted to interview, one expert declined to be interviewed for this review and, at the time we analyzed our interview responses for this report, we had not yet completed our interviews with three experts.

route centers, oceanic ATC centers, and other facilities,<sup>5</sup> and (2) ATC and other supporting systems and infrastructure, including ground-based surveillance radar-facilities, communication equipment, and automation systems and facilities that house and support these systems.

- Safety and regulatory functions: Several offices within FAA serve safety and regulatory functions. For example, the FAA's Office of Aviation Safety and two offices within it—the Aircraft Certification Service and Flight Standards Service—issue certificates for new air operators, new aircraft, and aircraft parts and equipment, and grant approvals for such things as changes to air operations and aircraft, based on federal aviation regulations.<sup>6</sup> The Unmanned Aerial Systems (UAS) Integration Office is responsible for ensuring that UASs are integrated into and operate safely in the national airspace system.<sup>7</sup>
- ATC modernization and capital investment efforts: A number of offices within FAA are involved in the management and implementation of modernization and capital investment efforts, including ATO, the Office of Aviation Safety, and the Next Generation Air Transportation System (NextGen) office, which is responsible for implementing NextGen—a complex, long-term initiative to modernize the ATC system with fiscal year 2015 funding totaling over \$850 million.
- Research, development, and training: FAA also funds research and development centers, such as the Mike Monroney Aeronautical Center and the William J. Hughes Technical Center, which support aviation research, development, testing, and training and evaluation of ATC and aircraft safety, among other aviation areas.

FAA is funded from appropriations primarily from the Airport and Airway Trust Fund (Trust Fund). In fiscal year 2015 FAA's funding was over \$15 billion. This funding finances air traffic operations, facilities and equipment, research engineering and development, and grants in aid for airports. Trust Fund revenues come from a set of excise taxes paid by users of the national airspace system. The majority of Trust Fund revenues come from taxes levied on passenger tickets. The percentage of FAA's funding for operations received from the Trust Fund has changed over time, averaging 60 percent over the past 10 fiscal years, with the remainder coming from General Fund appropriations over that same period.<sup>8</sup>

#### Transition Issues

We have identified the following key issues through preliminary discussions with experts and the literature we have reviewed (see fig 1):

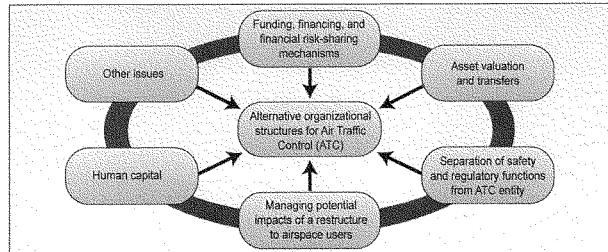
<sup>5</sup> In fiscal year 2015, FAA had a workforce of 40,000 thousand employees including approximately 14,500 air traffic controllers, 5,000 air traffic supervisors and managers, 7,800 engineers, maintenance technicians, and over 7,000 FAA safety staff.

<sup>6</sup> FAA inspectors and engineers interpret and implement these regulations governing certificates and approvals through FAA policies and guidance, including orders, notices, and advisory circulars.

<sup>7</sup> This office consolidates Aviation Safety and ATO personnel with UAS expertise into a single organization.

<sup>8</sup> The percent from the General Fund for FAA's overall funding is lower. For example, in 2009, 75 percent of FAA's overall funding came from the Trust Fund.

Figure 1: Key Potential ATC Transition Issues



Source: GAO analysis of literature and expert interviews. | GAO-16-386R

#### Funding, Financing, and Financial Risk-Sharing Mechanisms

When considering a reorganization of the ATC system, a central area of focus is how the funding of the entity should be structured.<sup>9</sup> The experts we interviewed identified many issues that would need to be considered regarding funding and other elements of the financial structure of a restructured ATC, such as (1) developing a funding and fee structure, (2) oversight of fee structure and rates, (3) methods to mitigate economic and financial risks, and (4) liability issues.

- Developing a funding and fee structure:* A restructured ATC could have a variety of governance and ownership structures. Depending on how legislation governing funding is written, a new ATC entity might require a funding mechanism other than the current tax and general fund funding. A user fee system, with ATC charges levied based on use of the system, would be one way to fund the ATC system. Experts cited a variety of elements to consider in determining the most appropriate structure of such fees.<sup>10</sup> One issue cited is that it would be important to recover, in aggregate, all costs of running the system. However, many of these costs are fixed costs that relate to broad elements of the system that need to be in place to provide any ATC services at all. Because there is not a truly cost-based means to assign fixed costs across users, their assignment involves judgment and consideration of policy goals. As an ATC transition issue, the experts noted that coming to an agreement on how fee formulas should be structured would require involving all stakeholders of the system as well as ensuring that fees are adequate in aggregate to enable the ATC entity to be financially sustainable over the long term. Experts we spoke to had varied views about the structure and level of stakeholder input that would be needed.

Further, determining how costs would be borne by different users and what types of exceptions, if any, should be made was an issue raised by the experts we spoke to. For example, according to these experts, whether certain users (such as government, General Aviation (GA)) should be charged according to the same formula as commercial users would be an important consideration. It was noted that non-commercial GA flights often use

<sup>9</sup> In 2014 we found that 36 of 64 stakeholders who suggested a change in FAA's funding suggested modifying how FAA's ATC operations and NextGen programs are funded. GAO-14-770.

<sup>10</sup> We previously reported on criteria and tradeoffs to consider in the design of federal user fees. GAO, *Federal User Fees: A Design Guide*, GAO-08-386SP (Washington D.C.: May 29, 2008).

minimal ATC services and that it may be difficult to track their use. Moreover, these users may have minimal ability to pay, so much so that significant charges might substantially curtail their use of the system. Other users, such as the military and state and local government users may also be considered unique in their use of the system, as they are providing social benefits through their activities.

- *Oversight of fee structure and rates:* If the ATC system is restructured, a transition issue to consider is economic oversight of its operations. The ATC entity would be a monopoly provider of ATC services and may have substantial leeway regarding its user fee structure. According to our preliminary discussions with experts, the determination of whether an economic regulator would need to be in place would depend on the nature of the ATC entity. For example, an oversight board made up of stakeholders—such as commercial air carriers, business and general aviation, government officials, and unions, as in the Canadian model, might not require economic regulation because the board’s membership has a vested interest in keeping rates at appropriate, cost-based levels. According to these experts, if it is determined that some oversight is needed, another transition issue would be how to provide that oversight—such as through an existing government agency such as the Department of Transportation (DOT), or some new structure.
- *Mitigating economic and financial risks:* Another key issue that would need to be considered, according to the experts, is how a new entity would mitigate risk of unforeseen events or economic downturns that could affect traffic and revenue. For example, following the 2001 terrorist attacks in New York City and Washington D.C., the United Kingdom (UK) and Canada ANSPs experienced downturns in aviation traffic and associated declines in revenue. As a result, both ANSPs adjusted their funding and financing structure to mitigate the impacts of these declines. For example, the UK ANSP took several steps to mitigate the declines in revenue, which included refinancing its debt, obtaining additional funds from the government and private shareholders, and setting up a new regulatory structure that allows it to mitigate the effects of an industry downturn through automatic price increases that are triggered by reductions in air traffic. To maintain operations, the Canadian ANSP cut costs and raised its user fees, consulting with users as required. According to our literature review and preliminary discussions with experts, considerations for mitigating economic and financial risks might include a reserve fund and careful considerations of the financial structure of the entity—in particular, ensuring the entity is not overly reliant on debt financing.
- *Liability:* According to our preliminary discussions with experts another transition issue is ascertaining whether the ATC entity would be fully insurable in the private market. The extent of insurance coverage needed might be substantial, and as such, a consideration would be whether the federal government should play a role in insuring certain risks that may not be privately insurable. For example, according to some experts, the federal government might provide insurance coverage in case of unusual events, such as a terrorist incident. In the case of commercial space, for example, the federal government, subject to the availability of appropriations, provides for a payment of claims in excess of the required insurance mandated by law.<sup>11</sup>

<sup>11</sup> See *Federal Aviation Administration: Commercial Space Launch Industry Developments Present Multiple Challenges*, GAO-15-706 (Washington D. C., Aug. 25, 2015).

#### Asset Valuation and Transfers

As discussed above, FAA has a broad array of assets and obligations including physical assets (i.e., facilities, equipment, land, etc.) and software, as well as leases and service contract obligations. The experts we interviewed noted that, in an ATC restructuring, several transition issues, related to how assets are valued and transferred to the ATC entity, would need to be considered including (1) whether the federal government should seek remuneration for the transfer of ATC assets, and (2) if so how, the ATC system should be valued.

- *Remuneration to federal government for transferred assets:* Based on our preliminary discussions with experts, whether the ATC system should be sold or transferred without payment would need to be decided based on consideration of several factors, including: (1) the governance and ownership structure of the ATC entity; (2) the extent to which the government and ATC entity agree that users of the system already paid for ATC assets through ticket and fuel taxes; and (3) considerations regarding the financial impact of such a payment on the ATC entity and on user fees it will charge. For example, if the ATC entity is a government corporation, then the issue of whether the federal government should seek remuneration for the transferred ATC system might not be relevant. If the new entity is either a private non-profit or for-profit entity, then the issue of whether the federal government should seek remuneration for the transfer of the ATC system would be an important consideration. Another potential option, according to these experts, is that the government could have a lease arrangement in which the ATC entity would operate the system but the government maintains ownership of the assets. Another consideration cited would be whether any transfer would involve all assets and whether the ATC entity would have the option of deciding how to use and repurpose the transferred assets.
- *ATC system valuation:* If the ATC entity pays the federal government for acquiring the ATC system, our preliminary discussions with experts suggested that a variety of factors might need to be considered in determining the ATC system's value and potential sale. For example, experts indicated that determining the appropriate amount of the remuneration would need to consider the system's value based on future revenues as well as the financial impact of any payment on the ATC entity and system users. Experts noted that the higher the agreed upon payment for the ATC system, the higher the revenue requirements for an ATC entity. According to experts, coming to an agreement on a sale price should involve considering the views of all the parties involved (e.g., the government, ATC entity, and aviation stakeholders). In particular, the rate of fees that system users pay might be part of the price determination for the system.

#### Separation of Safety and Regulatory Functions from an ATC Entity

Preliminary discussions with experts have raised several transition issues that would need to be considered when separating safety oversight from ATC operations, such as (1) challenges with delineating roles and responsibilities, (2) potential impacts to coordination, and (3) potential impacts to the remaining safety regulator.

- *Delineating roles and responsibilities:* According to experts, while it may be easy to identify some existing FAA safety and regulatory functions that would clearly remain with the safety regulator such as certification, development of safety standards and policies, and oversight activities, other safety roles and responsibilities may not easily be split between the safety regulator and ATC entity. For example, one expert stated that it is not clear how activities

such as the development of flight standards and procedures and approvals of new procedures, which spans FAA's operations and safety organizations, would be easily separated between the safety regulator and ATC entity. Another expert stated that within the FAA, there are many offices that have shared responsibilities and that a transition period may be needed to figure out the functional separation of the ATC entity and the safety regulator. Further, according to experts, how decisions about safety criteria, standards, and processes (e.g., separation standards for runways) would be made and who should be involved in that decision-making process would need to be addressed. Some experts stated that a process will need to be put into place to address disagreements between the safety regulator and the ATC entity regarding safety decisions.

- *Coordination impacts:* Another issue to consider is how coordination between the safety regulator and an ATC entity might be affected in a restructured organization. Current modernization and recapitalization efforts span across several FAA lines of business (e.g., the NextGen Office, ATO, and Office of Aviation Safety) and require coordination between multiple FAA lines of business. In a restructure, staff currently in these areas might be split between the ATC entity and the safety regulator. A consideration would be how to preserve coordination and expertise on ongoing work, such as NextGen. For example, according to one expert, a critical part of NextGen, is developing and implementing new ATC procedures which might be more difficult to do if the ATC entity and safety regulator are separated. See below for further discussion of issues related to NextGen.
- *Potential Impacts to remaining safety regulator:* Finally, according to experts and literature we reviewed, another key transition issue that would need to be considered is mitigating potential impacts to the safety regulator as a result of a restructuring, such as funding and hiring impacts. According to one expert, a restructuring could result in the safety regulator being more vulnerable to funding challenges because the safety regulator would no longer have the ability to shift resources among programs as FAA has some ability to do. Additionally, one expert stated that another potential impact to the safety regulator is that it may face challenges hiring skilled staff because it would be competing with the ATC entity for skilled labor. For example, Transport Canada—the safety regulator of the Canadian ANSP—lost many skilled staff that went to the ATC entity. According to Transport Canada officials, they have continued to face challenges filling technical positions within the organization. Finally, according to our interviews with experts, another area where continued coordination would be important is in ensuring that the safety regulator has access to safety data and other information to continue to maintain oversight and safety.

#### Managing Potential Impacts of a Restructured FAA to Airspace Users

Another transition consideration according to experts and literature we reviewed is how to mitigate potential impacts to airspace users associated with a restructure, including (1) cost impacts to different users and (2) impacts to users' access to the airspace.

- *Fee impacts:* Currently an array of users access the U.S. airspace, and the costs of the system are paid by these users through a series of taxes and fees paid as described above. If a system of user fees were to replace the current financing structure, there may be differential effects of the new funding structure across these different users. As we previously noted, a transition issue identified through our preliminary discussions with experts is how any user fee structure might differentially affect varied users and, in turn, how this would impact the use of the airspace. For example, some of the experts we spoke with



noted that, depending on how user fees are structured, it is possible that general and business aviation might see their contribution to the cost of ATC services rise and that this increase could reduce the use of the airspace by these users. One expert stated that the United States benefits from a healthy GA community because it promotes the development of pilots, some of whom will go on to work in the commercial airline industry. Considering how each user group's fees would vary from their current payment of taxes and fees would be important to determine so as to develop a means to understand and potentially mitigate the extent of such effects on certain groups of users. As we reported—a revised fee structure that better aligns fees with costs imposed by the various types of users could result in a more economically efficient use of the traffic control system.<sup>12</sup>

- *Access impacts:* In addition, another concern raised by experts during our interviews is that small and rural communities could be negatively affected by a restructured ATC. According to one expert whom we spoke to, rules need to be in place for the ATC entity to not restrict access so that only high value customers, such as commercial airlines are served; access should be maintained for small communities and other services, which are important but don't make a lot of money. In the case of the Canadian restructure, Canada's law addresses this issue by providing protections for designated services in northern or remote areas.<sup>13</sup>

#### Human Capital

Based on our preliminary discussions with experts, consideration must be given for issues related to human capital issues including (1) employee compensation and other benefits, (2) collective bargaining, and (3) leadership and managing the organizational cultural change. According to our selected experts, these issues may affect morale, retention, and financial viability.

- *Employee compensation and benefits:* FAA employees participate in the federal government's various employee benefit programs, which include, for eligible employees and retirees, pension benefits, employee health insurance, and retiree health insurance. These programs include the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), and the Federal Employees Health Benefits Program, all administered by Office of Personnel Management. One issue is whether employees of the new entity would have these same benefit provisions or something different. During preliminary discussions, experts expressed concerns about how providing varying benefit structures to existing employees and new employees might affect employee satisfaction, retention, and future hiring. For example, in transitioning to a private entity, the Metropolitan Washington Airports Authority and Canadian ANSP provided similar benefits to the employees before and after the transition to maintain morale.

<sup>12</sup> See GAO, *Assigning Air Traffic Control Costs to Users: Elements of FAA's Methodology Are Generally Consistent with Standards but Certain Assumptions and Methods Need Additional Support*, GAO-08-76 (Washington, D.C.: Oct. 19, 2007) and GAO, *Aviation Finance: Observations on the Current FAA Funding Structure's Support for Aviation Activities, Issues Affecting Future Costs, and Proposed Funding Changes*, GAO-07-1163T (Washington, D.C.: Aug. 1, 2007).

<sup>13</sup> Specifically, the legislation specifies that NAVCanada—the Canadian ANSP—must, under specified circumstances give notice before terminating or reducing services to northern or remote services, and that charges for designated northern or remote services must not be higher than charges for similar services utilized to a similar extent elsewhere in Canada. See GAO, *Commercial Aviation: Status of Air Service to Small Communities and the Federal Programs Involved*, GAO-14-454T (Washington D.C., April 30, 2014).

In the case of the United States Postal Service (USPS), the Postal Reorganization Act<sup>14</sup> established USPS as an independent establishment of the executive branch of the government in 1970. Subsequently, in 1974 Congress amended statutory provisions to allocate responsibility to USPS for Civil Service Retirement System benefits attributable to post-1971 salary increases for employees who worked both for the postal department, which had been a federal agency, and USPS.<sup>15</sup> In this instance, Congress considered that USPS was to be self-sustaining and that the federal government, which had no control over USPS's pay increases, should not be liable for pension benefits attributable to those increases.<sup>16</sup> According to our literature review and preliminary interviews with experts, transferring too much unfunded liability to the ATC entity could negatively affect its long-term viability.

A second set of issues involves the governance and funding of retirement benefits (i.e., of pension and retiree health insurance benefits). For example, the new entity's benefit programs might be privately administered by the new entity, or the new entity might continue to participate in the federal government's benefit programs, with a separate accounting of costs attributable to the new entity (a related question is whether the new entity's employees would be considered federal government employees). Further, numerous decisions would have to be made regarding the funding of retirement benefits. Because retirement benefits involve obligations extending decades into the future, actuarial estimates have to be made of the size of an entity's retirement liabilities and the amounts that would be needed to fund these benefits. One question is whether retirement benefits would have any kind of guarantee, and by whom, if funding for them proved to be inadequate. A related issue would be appropriate safeguards on how potentially large pools of retirement funds would be invested, which could affect risks borne by FAA workers, retirees, or customers, or by taxpayers. Another consideration would be the allocation of responsibility for funding these benefits between the new entity and the federal government. For example, the federal government might be given responsibility for the portion of retirement benefits attributable to employees' years of service prior to the establishment of the new entity, but even that principle requires additional definition. To the extent the new entity is made responsible at its outset for existing pension and retiree health liabilities, another funding issue is the extent to which the new entity is provided corresponding retirement funds to offset these initial liabilities.

- *Collective bargaining:* During discussions, experts told us that transferring collective bargaining agreements to the ATC entity could raise some challenges. For example, currently there are multiple unions that could be affected in a transition and determining how to proceed with bargaining agreements would take time. Discussions with experts indicate that union agreements could be transferred for a time period to avoid major disruption. In addition, according to experts, the ability of air traffic controllers to strike should be resolved. Currently, ATC controllers, as federal employees, are prohibited from striking, and in discussions, experts generally ATC controllers should not be given the authority to strike given the importance of the ATC function to safety and the economy.<sup>17</sup>

<sup>14</sup> Pub. L. No. 91-375, 84 Stat. 719 (1970).

<sup>15</sup> Pub. L. No. 93-349, 88 Stat. 354 (1974).

<sup>16</sup> GAO-12-146.

<sup>17</sup> 5 U.S.C. § 7311.

- *Leadership and managing the organizational culture change:* According to our literature review and preliminary discussions with experts, another key consideration is how a transition would impact the existing organizational culture and what can be done to mitigate barriers from the existing organizational culture. Our discussions with experts have focused on the nature of organizational culture and the difficulties that are entailed in bringing about substantial changes through reorganization. In prior GAO work, aviation stakeholders have cited FAA's organizational culture as a primary challenge for FAA in successfully implementing large-scale change management initiatives. We previously found that changing FAA's culture would take a significant amount of time and leadership given the organization has been conducting its work for many years.<sup>18</sup> We have also previously found that implementing large-scale change management initiatives, such as organizational transformations, are not simple endeavors and require the concentrated efforts of both leadership and employees to realize intended synergies and to accomplish new organizational goals.<sup>19</sup> Further, we found that recognizing the "people" element in these initiatives, while managing the risk of reduced productivity and effectiveness that often occurs as a result of such changes, is key to a successful merger and transformation. Experts we spoke to also noted the importance of communicating with staff often to help manage potential concerns and having strong leadership involved in a restructure.

#### Other Issues

According to our preliminary interviews, additional issues to be considered include (1) ensuring an adequate amount of time to adequately plan and implement a transition and (2) mitigating impacts on current FAA initiatives.

- *Time to plan and implement a transition:* Experts indicated that it would take time to find answers to all of these issues, as well as any others identified. It would also take time to change from the current organizational culture to a new culture. According to officials we spoke to in Canada, it took about 1 to 2 years to put in place the ANSP organization with all the legal and financial decisions required, and 2 years to phase in collection of fees from users. Experts indicated that the transition time for a U.S. restructure could be at least a couple of years. Also, we have reported that any large transformation could take 5 to 7 years given multitude of issues that have to be worked through.<sup>20</sup>
- *Impacts on current FAA initiatives:* In preliminary discussions, experts mentioned the importance of ensuring that a restructure does not adversely impact current FAA initiatives, including modernization efforts and UAS integration. We have noted that FAA needs to continue improving these areas because many of these recommendations represent a significant shift in how FAA normally conducts business, and if the workforce is reluctant to implement such changes, FAA's planned initiatives for addressing the recommendations could be delayed.<sup>21</sup> In our preliminary discussions with experts, experts had mixed views

<sup>18</sup> GAO, *Aviation Manufacturing: Status of FAA's Efforts to Improve Certification and Regulatory Consistency*, GAO-14-829T (Washington D.C. July 31, 2014).

<sup>19</sup> GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington D.C., July 2, 2003).

<sup>20</sup> GAO-03-669.

<sup>21</sup> GAO-14-829T.

about whether a restructure would negatively impact or delay the implementation of NextGen. For example, some experts we interviewed stated that a restructure of any kind would delay implementation of NextGen. According to one expert, with a separation, the most difficult and critical part of NextGen, that is, developing and implementing new ATC procedures would be put on hold while the remaining safety organization develops new oversight procedures. For example, the Metroplex<sup>22</sup> initiative and work that's involved in implementing a new Performance Based Navigation (PBN)<sup>23</sup> procedure requires conducting significant community outreach and completing environmental reviews. Other experts we spoke to did not think there would be a negative impact on NextGen timelines. One of these experts said that a restructure would allow the ATC entity to make better, timelier decisions about modernization improvements that would have a positive impact on NextGen over time.

In addition, while FAA is making efforts to improve and accelerate progress toward integrating UAS into the national airspace system, additional challenges remain, including in the areas of authority, resources, and potential leadership changes. As we noted in February 2014, the establishment of the UAS Integration office was a positive development because FAA assigned an Executive Manager and combined UAS-related personnel and activities from the agency's Aviation Safety Organization and Air Traffic Organization.<sup>24</sup> However, in preliminary discussions experts expressed concern that FAA's, current 5 staff in the UAS office that were quickly overwhelmed by rapidly developing technology, would face greater problems if it's unclear what FAA's authority and resources would be to regulate UAS under a restructured ATC.

#### Agency Comments

We provided a draft of this report to the Department of Transportation (DOT). Via email, the Director, Audit Relations and Program Improvement in the Office of the Secretary told us that DOT, including FAA, did not have any comments in response to the draft report.

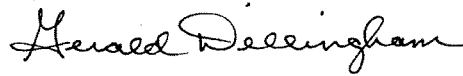
We are sending copies of this report to the appropriate congressional committees and the Secretary of Transportation. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

<sup>22</sup> Metroplexes are geographical areas that include several commercial and GA airports in close proximity (e.g., the D.C. Metroplex encompasses several major airports in the greater Washington, D.C. area, including Baltimore and Northern Virginia).

<sup>23</sup> PBN procures are intended to deliver new routes and procedures that primarily use satellite-based navigation and on-board aircraft equipment to navigate with greater precision and accuracy through all phases of flight.

<sup>24</sup> GAO, *Unmanned Aerial Systems: Efforts Made Toward Integration into the National Airspace Continue, But Many Action Still Remain*, GAO-15-254T (Washington D.C., Dec. 10, 2014).

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or DillinghamG@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in enclosure II.



Gerald Dillingham, Ph.D.  
Director, Civil Aviation Issues

Enclosure(s) – 2

### Enclosure I: Objective, Scope, and Methodology

This report provides preliminary information on experts' views of the nature and scope of key transition issues associated with a potential transition of the current air traffic organization in the United States to an organization different than the Federal Aviation Administration (FAA).

To identify transition issues associated with a potential restructure of the U.S. ATC system, we examined prior GAO work, reviewed available literature on restructuring of ATC organizations, and interviewed academics, professionals in the U.S. aviation industry, and officials involved in transitions in other countries.<sup>25</sup> This work identified ATC restructure transition issues related to (1) funding and financing, (2) asset valuation and transfers, (3) separating safety and regulatory functions from ATC operations, (4) managing potential impacts of restructuring to airspace users, (5) human capital, and (6) ATC modernization efforts, as well as other related issues.

We then selected 33 experts with a wide range of expertise who can speak to the ATC transition issues that we identified.<sup>26</sup> We identified these experts through a contract with the National Academy of Sciences (NAS), literature on ATC reform,<sup>27</sup> and related GAO reports. In particular, we provided NAS with criteria for selecting experts. The criteria included: (1) type and depth of experience, including the expert's recognition in the professional community and relevance of any published work; (2) present and past employment history and professional affiliations, as well as any potential conflicts of interest; and (3) other experts' recommendations.

NAS provided us biography and resume information on various experts. To obtain a balanced set of perspectives, we used the NAS information along with our research on other experts to develop our final list of 33 experts to interview, a listing that we believe, as a whole, provides a balanced set of perspectives.<sup>28</sup> See table 1 for a list of experts that agreed to be interviewed.

<sup>25</sup> The literature we reviewed did not consist of empirical studies, but rather were largely publications describing the transitions of ATCs in other countries. The transition issues that we identified from this body of literature were corroborated by our interviews with experts and stakeholders.

<sup>26</sup> We also confirmed our list of transition issues with the selected experts.

<sup>27</sup> We conducted a literature search for studies that examined issues related to restructuring the U.S. ATC system. Some of the reports that we reviewed included GAO, *Air Traffic Control System: Selected Stakeholders' Perspectives on Operations, Modernization, and Structure*, GAO-14-770 (Washington, D.C.: Sept. 12, 2014); GAO, *Air Traffic Control: Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from Their Commercialization*, GAO-05-769, (Washington D.C. July 29, 2005); MITRE, *CAA International Structures*, October 2014; and Bart Elias, CRS, *Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control* CRS Report R43844 (Jan. 5, 2015).

<sup>28</sup> NAS provided us with a list of 40 possible candidates for our expert interviews. In addition, we identified an additional 21 possible interview candidates. To select our final list of experts to interview, we combined the two lists of NAS and GAO identified experts. For each expert, we identified the issue area that different experts would be able to respond to, based on their area of expertise. After categorizing each of the experts, we then selected 5 to 8 experts within each issue area to ensure that our final list of experts represented experts with a balanced set of perspectives. Our final list of experts included 22 experts identified by NAS and 11 additional experts identified by GAO.

**Table 1: List of Experts Who Agreed to be Interviewed on Potential Transition Issues Associated with an ATC Restructure**

Expert	Organization
Catherine Deluz	Moody's
George Donohue	George Mason University
Bart Elias	Congressional Research Service
Edward Faggen	Metropolitan Washington Airports Authority (Retired)
William Fenton	KPMG (Retired)
Craig Fraser	Fitch Ratings, Inc.
Craig Fuller	The Fuller Company
Richard Golaszewski	GRA, Inc.
David Grizzle	Dazzle Partners, LLC
John Hansman	Massachusetts Institute of Technology
Thomas Hickey	Virginia Railway Express
James Higgins	University of North Dakota
Jeff Holt	Bank of Montreal
Margaret Jenny	RTCA
David John	Brookings Institution
Michael Lexton	RBC Capital Markets
Sid McGuirk	Embry-Riddle Aeronautical University
Donna McLean	Donna McLean Associates, LLC
Clinton Oster	Indiana University
Robert Poole	Reason Foundation
Jack Potter	Metropolitan Washington Airports Authority
John Putnam	Kaplan Kirsch Rockwell
John Samuels	Revenue Variable Engineering, LLC
Jack Schenendorf	Covington & Burling LLP
Michael Scott	Self Employed
David Seltzer	Mercator Advisors, LLC
Jeffrey Shane	International Air Transport Association
James Straker-Nesbit	Lloyd's of London
John Strong	College of William and Mary
Oliver Pulcher	Deutsche Flugsicherung GmbH (DFS)
Stephen Welman	MITRE
James Wilding	Metropolitan Washington Airports Authority (Retired)

Source: GAO information | GAO-16-368R.

This report is based on the results of interviews to date with 29 of the 32 experts that agreed to be interviewed during our ongoing review of transition issues associated with a potential ATC restructure.<sup>29</sup> We used a semi-structured interview format with open-ended questions to conduct these interviews. Since this work is still ongoing, we are unable to quantify the experts'

<sup>29</sup> Of the 33 experts that we selected and reached out to interview, one expert declined to be interviewed for this review and, at the time we analyzed our interview responses for this report, we had not yet completed our interviews with three experts.

responses, and as a result, we provided in this report examples of some of the issues experts mentioned during our meetings to date. For our final product we plan to follow up with each expert for a second round of data collection, using a more structured set of questions to allow for more quantification of their collective views.

We conducted this performance audit from June 2015 to February 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



**Enclosure II: GAO Contact and Staff Acknowledgments**

**GAO Contact**

Gerald L. Dillingham, Ph.D. (202) 512-2834 or [DillinghamG@gao.gov](mailto:DillinghamG@gao.gov)

**Staff Acknowledgments**

In addition to the contact named above, Cathy Colwell (Assistant Director), Amy Abramowitz, Melissa Bodeau, Martha Chow, Kevin Egan, Geoffrey R. Hamilton, Maureen Luna-Long, Maria Mercado, Sara Ann Moessbauer, Dominic Nadarski and Malika Rice were major contributors to this report.

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